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UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

KENNETH ALAN SHIFFER, :
Petitioner : CIVIL No. 1:00-CV-1829
v. :
BEN VARNER, et al., : (Judge Caldwell)
Respondents :
FILED
HARRISBURG, PA

MEMORANDUM OF LAW IN SUPPORT OF PETITIONER'S
APPLICATION FOR WRIT OF HABEAS CORPUS
UNDER 28 USC SECTION 2254

JUL 12 2001
MATT E. D'ANDREA, CLERK
Deputy Clerk

STATEMENT OF THE CASE

Procedural History

Petitioner was arrested and charged with criminal homicide on October 9, 1987 in connection with the death of Lenny Radziak. On November 4, 1987 a preliminary hearing before District Justice Richard Cashman was held, and following the hearing a prima facie case was found and the case was bound over for trial.

On June 1, 1988, a suppression hearing took place before the Honorable Jay W. Myers and after said hearing the court took the matter under advisement. On June 30, 1988, Judge Myers suppressed the photographic identification of Patricia Gardner but denied the suppression of Diane Szklarz and Beverly Lynn. See Exhibit "A".

On November 15, 1988, trial commenced before Honorable

Jay W. Myers and Jury. The Commonwealth was represented by Scott W. Naus, Esquire and Richard Knecht, Esquire; Petitioner was represented by William C. Costopoulos, Esquire and Charles Rector, Esquire. After a four day trial, on November 18, 1988, Petitioner was convicted of second-degree murder.

Timely post-trial motion in arrest of judgment and for a new trial was filed. On January 9, 1990, Judge Myers denied post-trial motions. See Exhibit "B". On February 12, 1990, petitioner was sentenced to Life imprisonment. Timely appeal was taken to the Superior Court of Pennsylvania, and on October 18, 1990, the Superior Court affirmed the judgment of sentence. See Exhibit "C". Allowance of Appeal was taken to the Supreme Court of Pennsylvania and was denied on June 27, 1991.

On January 6, 1997, petitioner filed his petition under the Post Conviction Relief Act and was appointed Hugh Summer, Esquire. On June 26, 1997 a hearing was held before Honorable Gailey C. Keller. On August 5, 1997, the Commonwealth filed a Motion for Taking Additional Testimony which was opposed by petitioner. The Court permitted the Commonwealth to present additional testimony, and on October 15, 1997 a hearing was held. On October 28, 1997, petitioner's petition under the Post Conviction Relief Act was denied by Judge Keller. See Exhibit "E".

Timely Notice of Appeal was taken to the Superior Court of Pennsylvania, and on February 10, 1999, the Superior Court Affirmed the Judgment of the trial court. Pro Se Allowance of Appeal was taken to the Supreme Court of Pennsylvania, and on December 3, 1999, was denied. See Exhibit F & G.

On October 16, 2000, Petitioner filed his present action with this Court. Respondents were ordered to file their answer to the petitioner's petition within twenty (20) days from February 23, 2001. After Respondents failed to answer this court, on April 24, 2001 Ordered the Respondents to show cause

to why they failed to file an answer to the petitioner's petition. Respondents filed a request for extension of time to file their answer, and also their answer to petitioner's petition. Petitioner filed his response to Respondents filings and requested an extension of time to respond to Respondents answer. On June 7, 2001, this Court ordered that Respondents extension be granted and a response to petitioner's petition be filed on or before June 26, 2001. The court also ordered that the petitioner shall have fifteen (15) days of receipt of the Respondents' filing to reply.

Petitioner filed a Clarification of this court's order dated June 7, 2001, to clarify the order. This court denied the petitioner's request and stated that Respondents will file a response to petitioner's petition on or before June 26, 2001. To present date, petitioner has not received any response from the Respondents. To protect the filing of petitioner's writ of habeas corpus, petitioner is presently submitting this present Memorandum of Law in Support of his Habeas Petition filed.

Factual History

During the early morning hours of May 11, 1987, as Leonard Radziak, the victim, was attempting to enter his room at Hayes Hotel, LaSalle Street, Berwick, Pennsylvania, he was severly beaten. During the petitioner's trial, Doctor Isidore Mihalikis testified that several of the victim's injuries were caused by a straight or rounded, cylindrical type object. A fellow hotel guest, Lawrence Laubach, known to the victim as "Louie the Kraut", heard someone crying "ou, ou, ou" and a banging sound down a second floor hallway of the Hotel. When he investigated he found the victim lying outside his room, bleeding from a head wound.

The victim was transported to Berwick Hospital, and then

flown to Geisinger Medical Center at Danville, where he died at 9:04 p.m. on May 12, 1987. Doctor Isidore Mihalikis ruled that the cause of death was lack of oxygen to the brain and bacteric in the bloodstream from multiple blunt injuries to the head.

When asked by Assistant Chief Thomas James of the Berwick Police Department, the beating victim said that "Louie the Kraut" did it. See Exhibit "H". The victim also stated to a lady friend, Marge Sorber, "George -- I had a bad argument with George." See Exhibit "I".

During May of 1987, Diane Szklarz was interviewed by Trooper Confer and Officer McCormick. Ms. Szklarz lives one block from the Hotel, and she saw a man at about 1:00 a.m., on May 11th, with a pipe in his right hand. This man had stopped and looked at her from under a street light for about seven (7) seconds. Ms. Szklarz picked the petitioner from looking through array of photos on July 13, 1987, after looking through her third array of photos, and petitioner was arrested on October 9, 1987 in connection with the death of Lenny Radziak.

Another person, George Sheeler, a sometime drinking buddy of the victim, was also arrested and charged with the murder of the victim. Mr. Sheeler was seen outside of the Hotel on the night of the beating by officer Chief James.

ISSUES PRESENTED

1. The suppression court erred in not suppressing the eyewitness identification.
2. The evidence presented is insufficient to sustain a verdict.

3. Counsel was ineffective for failing to permit petitioner to testify.

4. Counsel was ineffective for failure to object to the charge of reasonable doubt to the jury.

5. Trial counsel was ineffective for withdrawing a pretrial motion for change of venue or venire.

6. Counsel was ineffective for failing to impeach police officer about the money.

STANDARD OF REVIEW

The Antiterrorism and Effective Death Penalty Act ("AEDPA") which became effective on April 24, 1996, amended the standards for reviewing state court judgments in federal habeas petitions filed under 28 U.S.C. § 2254. Werts v. Vaughn, 228 F.3d 178, 195 (3d Cir. 2000). Since the Petitioner filed his habeas petition on October 16, 2000, the court would be required to apply the amended standards set forth in the AEDPA to his claims for federal habeas corpus relief. Id. (citing Lindh v. Murphy, 521 U.S. 320, 336 (1997) (presuming that a federal habeas court is to apply the amended standards set forth in the AEDPA when a petition is filed after the effective date of the AEDPA)).

The AEDPA increases the deference federal courts must give to the factual findings and legal determinations of the states courts. Id. at 196 (citing Dickerson v. Vaughn, 90 F.3d 87, 90 (3d Cir. 1996)). Pursuant to 28 U.S.C. § 2254(d), as amended by the AEDPA, a petition for habeas corpus may only be granted if (1) the state court's adjudication of the claim resulted in a decision contrary to, or involved an unreasonable application of, "clearly established Federal law, as determined by the Supreme Court of United States;"

or if (2) the adjudication resulted in a decision that was "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d)(1)(2). Factual issues determined by a state court are presumed to be correct and the petitioner bears the burden of rebutting this presumption by clear and convincing evidence. Werts, 228 F.3d at 196 (citing 28 U.S.C. § 2254(e)(1)).

The Supreme Court expounded upon this language in Williams v. Taylor, 529 U.S. 362 (2000). In Williams, the Court explained that "[u]nder the 'contrary to' clause, a federal habeas court may grant the writ if the state court arrives at a conclusion opposite to that reached by [the Supreme] Court on a question of law or if the state court decides a case differently than [the Supreme] Court has on a set of materially indistinguishable facts." Hameen v. State of Delaware, 212 F.3d 226, 235 (3d Cir. 2000)(citing Williams, 529 U.S. at 389-390). The Court in Williams further stated that "[u]nder the 'unreasonable application' clause, a federal habeas court may grant the writ if the state court identifies the correct legal principle from [the Supreme] Court's decisions but unreasonably applies that principle to the facts of the prisoner's case." Id. The "unreasonable application" inquiry requires the habeas court to "ask whether the state court's application of clearly established federal law was objectively unreasonable." Id. (citing Williams, 529 U.S. at 388-389). "In further delineating the 'unreasonable application' component, the Supreme Court stressed that an unreasonable application of federal law is different from an incorrect application of such law and a federal habeas court may not grant relief unless that court determines that a state court's incorrect or erroneous application of clearly established federal law was also unreasonable." Werts, 228 F.3d at 196 (citing Williams, 529 U.S. at 389); accord Matteo v. Superintendent, SCI Albion, 171 F.3d 877 (3d Cir. 1999).

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Petitioner's claims of ineffective assistance of counsel are governed by Strickland v. Washington, 466 U.S. 668 (1984). In Strickland, the United States Supreme Court set forth the standard for a petitioner seeking habeas relief on the grounds of ineffective assistance of counsel by stating, "First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudice the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Id. at 687.

Because "it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable," a court must be "highly deferential" to counsel's performance and "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Id. at 689. In determining prejudice, "the question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt." Id. at 695. "[A] court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." Id. at 697. "If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice that course should be followed." Id.

"It is past question that the rule set forth in Strickland qualifies as 'clearly established Federal law, as determined by the Supreme Court of the United States.'" Williams, 529 U.S. at 391. Thus, Petitioner is entitled to relief if the

Pennsylvania courts' decision rejecting his claims of ineffective assistance of counsel was either "contrary to, or involved an unreasonable application of," that established law. Id. The Pennsylvania Supreme Court has held that the Pennsylvania standard judging ineffectiveness claims is identical to the ineffectiveness standard enunciated by the United States Supreme Court in Strickland. Werts, 228 F.3d at 203 (citing Commonwealth v. Pierce, 527 A.2d 973, 976-77 (Pa. 1987)).

ARGUMENT

1. The suppression court erred in not suppressing the eyewitness identification.

At the suppression hearing, Ms. Diane Szklarz testified that shortly after 1:00 a.m. on May 11, 1987, she observed a man jogging down the street. The man stopped when she yelled for her dog and stood and looked at her for at least six seconds. It was brought out at trial that the distance between the man and Ms. Szklarz measured 80 feet. In two separate police reports, Trooper Confer's and Officer McCormick's notes reflected Ms. Szklarz's description of the man as having a beard with hair over the ears. However, Ms. Szklarz, denied telling the police that, rather, she said he had "a couple days'" growth on his face.

Based on the information given by Ms. Szklarz on the description of the man, she was shown three photo arrays, and did not identify anyone. Then, on July 13, 1987, two months later, she selected Petitioner's photo.

Petitioner argues that the reliability of the witness photo identification is undermined by the poor conditions she had to view the man she saw. The trial court held that she did have direct face and eye contact with the Petitioner

for at least six seconds, under a street light at a distance of approximately eighty feet, the identification was reliable. Reliability is the hitch pin in determining the admissibility of identification testimony and there are several factors to be weighed before reaching a decision based on the totality of the circumstances. Mason v. Brathwaite, 432 U.S. 98 (1977). Convictions based on eye witness identification at trial may be set aside on the grounds that it is unreliable when it gives rise to a very substantial likelihood of irrefutable misidentification. Simmons v. U.S., 390 U.S. 377 (1968).

In Petitioner's motion to suppress, he alleged that the photographic array identification made by Diane Szklarz as well as the preliminary hearing identification should be held inadmissible because the identification procedure was unduly suggestive and the identification of Petitioner was highly unreliable. This identification violated Petitioner's right to due process imparted to him by the United States Constitution.

On a challenge to photographic array identification, the suppression court must determine whether the identification procedure was so suggestive and conducive to irreparable mistaken identity so as to deny the accused due process. Commonwealth v. Thomas, 363 Pa.Super. 348, 526 A.2d 380-1 (1987). Reliability is the primary criterion in assessing the admissibility of a challenged identification. Manson v. Brathwaite, 432 U.S. 98 (1977).

To ascertain the reliability of the identification, the following factors are considered: (1) the opportunity of the witness to view the criminal at the time of the crime; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description of the criminal; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the length of time between the crime and the

confrontation. Neil v. Biggers, 409 U.S. 188, 199 (1972).

Given the extreme unreliability of Ms. Szklarz identification and the suggestiveness of the identification procedure, Petitioner's constitutional right of due process under the United States Constitution was abridged by the admissibility of her identification.

2. The evidence presented is insufficient to sustain a conviction.

The evidence that was adduced at trial against the petitioner is not sufficient to prove his guilt of murder in the second degree. The eyewitness identification of Diane Szklarz was self-contradictory, inconsistent and fatally flawed. The jacket that was discussed during trial that contained blood was without evidentiary value because it was of unknown origin. The dying declaration of the victim should have proven that the petitioner was not guilty of the murder.

When the petitioner was arrested he voluntarily told the police that George Sheeler telephoned him about robbing a person of \$400.00, but the petitioner refused to do anything to this person. Petitioner told police that when the beating took place he was with his girlfriend, and petitioner's girlfriend corroborated this alibi.

There was no evidence presented at trial that the petitioner was at the bar on May 10th. However, George Sheeler was there with the victim. Also at the bar were George Sisko, Ernie Knorr, Joan Beaver and Tom McGraw.

While at the bar, the victim flashed the \$400.00 he had to Raymond Feustemaker. Also, he flashed the money at George Sisko, who in turn asked him for a loan. Ernie Knorr drove the victim back to the Hotel along with McGraw and Beaver,

and helped him into the Hotel.

The one person at the bar, George Sisko, said he went to the Slovick Club after leaving the Old Man's Club about 12:30 or 12:45 a.m., however, the Slovick Club closed at midnight. Then, Mr. Sisko informed the police that he got a watch from the man who murdered the victim, but he couldn't remember his name. By August of 1987, Mr. Sisko's memory improved for he remembered that George Sheeler gave him the watch.

As for George Sheeler, he was the initial suspect in this case. Mr. Sheeler maintained that he left the Club at 1:00 a.m. and walked to the R.G. Smith Trailer Park, however, the police stopped him in a different location between 2:00 and 2:15 in the morning.

We go on to Diane Szklarz, the women who could see in the dark and only with a little light, states that it was the petitioner. That on May 13th Ms. Szklarz contacts the police and told them that on May 11th at 1:00 a.m., she saw a man with a pipe jogging past her home. When she yelled for her dog, the man that was jogging stopped under a street light and looked at her. If this person was the petitioner, then it would seem very odd that he would stop right under a light to show someone his face. But, the story becomes even better, as Ms. Szklarz states that the man was carrying a silver pipe in his right hand, three-foot long; hunched over; had on dark pants, not jeans, white sneakers with a black design, and a black Member's Only jacket. To make this story of hers better, she stated, "a shortwaisted jacket with ribbing on the bottom, and ribbing on the cuffs, and two snaplike things on the shoulder. She was able to see all of this within seven seconds and at a distance of 82 feet.

To add even more to her story, she stated that the person was white, had dark hair that came over the ear parted in the middle, and was floppy, which means, styled and moussed. Although Ms. Szklarz insisted that the police wrongly wrote down in their reports that she told them the man had a beard, both Trooper Confer and Officer McCormick, in separate reports, clearly noted that she told them he had a beard but no mustache. In the arrays of photos shown to her, it took three arrays until she picked the petitioner, who was clean shaven in the photo.

In search of the petitioner's residence, the police found a Member's Only jacket which had blood on it. When the jacket was sent to the FBI crime laboratory, they could not determine whether the blood was human or animal. Prior to trial, the defense submitted the jacket to a DNA laboratory along with a sample of the victim's blood for testing. The lab was unable to conduct the test despite attempts to do so.

Given the highly speculative nature of the jacket, containing blood that cannot even be said to be of human origin, together with the defense effort to have blood undergo DNA testing, the jacket lacks any evidentiary value in this case, and fails to support Petitioner's conviction.

Petitioner's co-defendant knew that the victim had four \$100.00 bills on his person, and the victim was displaying the money to patrons at the club. Also, the victim stated that he had an argument with "George" before he was beaten. George Sisko also needed money that night, in fact he tried to borrow money from the victim at the club. Also, Mr. Sisko received a watch from George Sheeler, the watch that belonged to the victim.

One important area that this court must take note of is the victim's dying declaration to where he stated to Chief

Thomas James, "Louie the Kraut" did it. See Exhibit "H". This dying declaration in itself should place reasonable doubt to the petitioner's guilt.

For the above reasons, this Court should appoint counsel to the petitioner and hold an hearing on the evidences of this case, and also on the testimony that was given at trial.

3. Counsel was ineffective for failing to permit the petitioner to testify.

The decision whether to testify on one's own behalf is to be made by the accused after full consultation with counsel. Commonwealth v. Rowles, Pa. 462 A.2d 619 (1983).

In order to support a claim that counsel was ineffective for failing to put the accused on the witness stand, the accused must show that counsel interfered with the accused's freedom to testify or that counsel gave specific advise so unreasonable as to vitiate a knowing and intelligent decision by the accused not to testify. Commonwealth v. Fowler, Pa.Super., 523 A.2d 784 (1987).

In this present case the testimony presented at hearing does not show evidence of interference by trial counsel. Petitioner's freedom to testify as Petitioner did not persist after being advised by trial counsel. The testimony does, however, indicate advise by trial counsel was so unreasonable as to vitiate a knowing and intelligent decision by the Petitioner not to testify.

Trial counsel testified at the hearing that the major concern in permitting Petitioner to testify was that the Petitioner was subject to impeachment as a result of a prior conviction the Petitioner had for the crime of aggravated assault.

Pennsylvania Courts have permitted impeachment of witnesses by proof of any felony or misdemeanor conviction if it was in the nature of crime falsi, that is involved dishonesty or false statement. Commonwealth v. Bighum, Pa., 307 A.2d 255 (1973). If a witness is also the Defendant in a criminal trial, additional protectors attach when evidence of prior convictions is offered to impeach. The Courts have recognized the "tendency of a normal juror to accept testimony of prior convictions as a basis for finding a predisposition to commit the crime charged. In this instance the current charge was for an assault that led to murder whereas the prior conviction was for assaultive behavior. Aggravated assault has been held not to constitute a crime of false statement or dishonesty. Commonwealth v. Griman, Pa.Super., 378 A.2d 377 (1977).

Trial counsel's specific advise was: "So I did not tell him not to testify." I told him, "in my opinion, if he testified this assault, this aggravated assault and battery, was coming in. And, if he was asking me what I thought, I thought it was in his best interest not to take the witness stand."

Given the state of the trial counsel's advise not to testify because of the possibility of prior conviction impeachment was totally unreasonable and did in fact vitiate the decision by Petitioner not to testify. Trial counsel also had another avenue to pre-test the impeachment question which he chose not to pursue. Trial counsel testified that he was aware that a Motion in Limine could be filed to get a ruling on the issue outside the presence of the jury but could not explain his failure to file a Motion in Limine. Petitioner testified that he felt the jury had to hear from me that I wasn't involved in the crime. He indicated he would have done so absent the advise concerning impeachment.

Petitioner was obviously prejudiced by the erroneous advise given by his counsel.

4. Counsel was ineffective for failure to object to the charge of reasonable doubt to the jury.

The beyond a reasonable doubt standard is a requirement of due process, but the Constitution neither prohibits trial courts from defining reasonable doubt nor requires them to do so as a matter of course. Hopt v. Utah, 120 U.S. 430, 440-441 (1887). As long as the court instructs the jury on the necessity that the defendant's guilt be proven a reasonable doubt, see Jackson v. Virginia, 443 U.S. 307, 320, n.14 (1979), the Constitution does not require that any particular form of words be used in advising the jury of the government burden of proof. Taylor v. Kentucky, 436 U.S. 478, 485-486 (1978).

In Cage v. Louisiana, 498 U.S. 39 (1990), the definition of reasonable doubt was given as follows:

"'[A reasonable doubt] is one that is founded upon a real tangible substantial basis and not upon mere caprice and conjecture. It must be such doubt as would give rise to a grave uncertainty, raised in your mind by reasons of the unsatisfactory character of the evidence or lack thereof. A reasonable doubt is not a mere possible doubt. It is an actual substantial doubt. It is a doubt that a reasonable man can seriously entertain. What is required is not an absolute or mathematical certainty, but a moral certainty.'" Id., at 40. (emphasis added by the Court in Cage).

The court held that the highlighted portions of the instruction rendered it unconstitutional:

"It is plain to us that the words 'substantial' and 'grave,' as they are commonly understood, suggest a higher degree of doubt than is required for acquittal under the reasonable doubt standard. When those statements are then considered with the reference to 'moral certainty,' rather than evidentiary certainty, it becomes clear that a reasonable juror could have interpreted the instruction to allow a finding of guilt based on a degree of proof below that required by the Due Process Clause." Id., at 41.

When reviewing a jury instruction that defines "reasonable doubt," it is necessary to consider the instruction as a whole and to give the words their common and ordinary meaning. It is not sufficient for the jury instruction merely to be susceptible to an interpretation that is technically correct. The important question is whether there is a "reasonable likelihood" that the jury was misled or confused by the instruction, and therefore applied it in a way that violated the Constitution. Boyd v. California, 494 U.S. 370, 380 (1990). Any jury instruction defining "reasonable doubt" that suggest an improperly high degree of doubt for acquittal or an improperly low degree of certainty for conviction, offends due process. Either misstatement of the reasonable doubt standard is prejudicial to the defendant, as it "vitiates all of the jury's findings," and removes the only constitutionally appropriate predicate and the jury's verdict.

The Court, in the petitioner's case, charge to the jury defined reasonable doubt as follows, with no exception from trial counsel:

"As part of that concept is included the phrase or expression reasonable doubt. Again we have a duty to explain the legal ramifications or legal significance of that phrase as it applies to that particular concept. When we say that the Commonwealth must prove the guilt of the Defendant beyond a reasonable doubt, reasonable doubt does not mean beyond the shadow of a doubt, nor beyond the possibility of a doubt, nor is it a doubt that a juror might conjure up in his or her own mind to avoid the performance of an unpleasant duty. But, reasonable doubt simply defined is such a doubt that would cause a person of ordinary firmness and prudence to hesitate to act in important affairs of his or her own life. Obviously a doubt to be reasonable arise from the evidence and must be such a doubt that would fairly strike a conscientious mind and cloud your judgment and cause you to hesitate to conclude that this Defendant is guilty"

(emphasis supplied).

Any instruction which allows a finding of guilt based upon the degree of proof that is less than required by the due process clause is a violation of that guarantee. Where a jury instruction of reasonable doubt is constitutionally deficient, prejudice must be presumed and the deficiency must be viewed as plain error. U.S. V. Birbal, 62 F.3d 456 (2nd Cir. 1995).

In the context of the petitioner's case the evidence consisted of a strongly contested identification of the Petitioner by an eyewitness and the introduction of a jacket containing blood which was not capable of being described as human. The point of the charge was to tell the jury that the vitally important and all pervasive reasonable doubt

standard was limited to the evidence in the case. Failure to instruct the jury that reasonable doubt could arise from the lack of evidence prejudiced the Petitioner in such a way that he was denied a fair verdict.

5. Trial counsel was ineffective for withdrawing a pretrial motion for change of venue or venire.

At the post conviction hearing it was revealed that trial counsel withdrew a Motion for Change of Venue or Venire on the basis that the trial judge would permit him individual voir dire of potential jurors.

The record in this case reveals that trial counsel in support of the Motion for Change of Venue/Venire cited the extensive prejudicial coverage afforded the case in the print, radio and television medias. This case was also one of a series of homicide cases in Berwick for which a special state police task force had been formulated.

In order for pre-trial publicity to be presumptively prejudicial a defendant must prove two (2) points: first either that (a) the publicity is sensational, inflammatory, and slanted toward conviction rather than factual or objective; (b) the publicity reveals the accused's prior criminal record, if any, or if it refers to confessions, admissions, or reenactments of the crime by the accused; or (c) the publicity is derived from police and prosecuting officer reports; and secondly, that the publicity must be so extensive, sustained, and persuasive without sufficient time between the publication and trial for the prejudice to dissipate, that the community must be deemed to have saturated. Commonwealth v. Ruca, Pa. 670 A.2d 1129 (1996).

The newspaper articles submitted as Defendant's Exhibit #1 evidence that Defendant has a prior conviction for

aggravated assault. (Press-Enterprise article dated October 10, 1987, Press Enterprise article dated November 17, 1988). In one instance, it was inaccurately reported that Defendant had admitted to the killing. The Times Leader articles dated August 26, 1988 and September 2, 1988 reported that Defendant told police he acted alone in the murder. Police and prosecuting officer reports were consistently quoted as sources of information by the media. Press Enterprise May 14, 1987, October 10, 1987, November 4, 1987, November 5, 1987, November 21, 1987, June 2, 1988, June 9, 1988, October 9, 1988, the Petitioner was depicted in a number of photographs handcuffed and in the custody of law enforcement authorities. Press Enterprise articles dated October 10, 1987, November 5, 1987, June 2, 1988 and November 17, 1988. See Exhibit "J"

In view of the extensive pre-trial publicity as evidenced by the newspaper articles introduced as Petitioner's Exhibit #1, the introduction of Petitioner's prior criminal record into articles, the use of police reports in articles and the photographs depicting Petitioner in custody and in company of law enforcement authorities, the conclusion of the court should be that the publicity was so extensive, substantial and persuasive that the community was indeed saturated. The publicity should be ruled to have been presumptively prejudicial and the failure of trial counsel to pursue his change of venue motion prejudiced the Petitioner.

6. Counsel was ineffective for failing to impeach police officer about the money.

Petitioner's statement to the police indicated that he had read that the victim was found with \$400.00 on his person. Petitioner testified at his post conviction hearing that he informed trial counsel about a Press Enterprise Newspaper article dated May 14, 1987 introduced as exhibit at the hearing. See Exhibit "K"

The article reports that "at this point, theft has been ruled out as a motive because the victim had \$400.00 in his possession, McCormick said." Despite being proffered this information by Petitioner, trial counsel did not cross-examine police officer witnesses about this obvious source of information as to money on the victim.

The importance of the testimony about Petitioner's guilty knowledge cannot be overemphasized Judge Myers' (trial judge) opinion in support of denial of post-trial motions noted that authorities testified that such figures were not published in the newspaper and yet the Petitioner claims to have gathered the information from that source. Trial counsel by utilizing the article would have been able to establish that the Commonwealth had publicly maintained the position that \$400.00 was in fact found on the victim and expose the \$450.00 for the rouse that it was. Because trial counsel did not confront Trooper Carlson with the inconsistency, he was unable to get to the cross-examination and argument that the \$50.00 additional dollars never in fact existed. Raymond Fenstermacher testified that he saw the victim flash four (4) one hundred dollar bills. However, the failure to vigorously pursue this issue left the jury with the belief that the police had information about an additional \$50.00 that had never been released to the press. The jury informed that money amount was only known by police.

CONCLUSION

WHEREFORE, for the reasons within, Petitioner respectfully request that this Honorable Court appoint counsel and order an hearing on the within issues.

Respectfully submitted,

Kenneth Alan Shiffer
#AT-1194
1000 Follies Road
Dallas, Pa. 18612-0286

Exhibit "A"

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
V. : OF THE 26TH JUDICIAL DISTRICT
: OF PENNSYLVANIA
: COLUMBIA COUNTY BRANCH
: CRIMINAL DIVISION
KENNETH A. SHIFFER, : NO. 294 of 1987
DEFENDANT :
SCOTT W. NAUS, ESQUIRE, District Attorney for Commonwealth of Pennsylvania
WILLIAM COSTOPOULOS, ESQUIRE, Attorney for Defendant

O P I N I O N

The Defendant has been charged with Criminal Homicide, 18 Pa. C.S.A. 2501(a), (b), as a result of an alleged incident occurring in the Borough of Berwick, Columbia County, PA, on May 11, 1987.

Defendant has filed a Motion to Suppress three separate photographic identifications. After hearing held, Defendant's Motion is presently before us for disposition.

Defendant argues that the identifications were unduly suggestive and unreliable and therefore violative of his Federal and Pennsylvania constitutional due process rights.

"The central concern where any identification is offered is whether, under the totality of circumstances, the identification was reliable. Manson V. Brathwaite, 432 U.S. 98, 97 S.Ct. 2243, 53 L.Ed.2d 140 (1977). A pretrial identification will not be set aside unless the facts demonstrate that the identification procedure 'was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable mis-identification.' Simmons V. United States, 390 U.S. 377, 384, 88 S.Ct. 967, 971, 19 L.Ed.2d 1247, 1253 (1968)."

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Commonwealth V. Linder, 284 Pa. Super. 327, 337, 425 A.2d 1126, 1131 (1981).

"[S]uggestiveness ... is only one factor to be considered in determining the admissibility of identification testimony. Suggestiveness alone does not warrant exclusion. Instead '[i]t is the likelihood of misidentification which violates a defendant's right to due process ..." Commonwealth V. Ransome, 485 Pa. 490,

495, 401 A.2d 1379, 1382 (1979), quoting from Commonwealth V. Sexton, 485 Pa. 17, 22, 400 A.2d 1289, 1291 (1979). Factors to be considered in evaluating the likelihood of misidentification in a particular instance are:

... the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of his prior description of the criminal, the level of certainty demonstrated at the confrontation, and the time between the crime and the confrontation. Against these factors is to be weighed the corrupting effect of the suggestive identification itself.

Manson V. Brathwaite, *supra*, 432 U.S. at 114, 97 S.Ct. at 2253, 53 L.Ed.2d at 154. See also Neil V. Biggers, 409 U.S. 188, 199, 93 S.Ct. 375, 382, 34 L.Ed.2d 401, 411 (1972).

Although Manson V. Brathwaite, *supra*, involved an allegedly suggestive confrontation, the factors to be considered in evaluating an alleged due process denial resulting from a photographic identification procedure are the same. Commonwealth V. Fowler, 466 Pa. 198, 207, 352 A.2d 17, 21 (1976).

Commonwealth V. Johnson, 446 A.2d 1311, 300 Pa. Super., 86 (1982).

The first of the three separate photographic arrangements the Defendant seeks to suppress is that of D. Sklarz. Defendant argues that the lapse of time between the alleged sighting, to wit, May 11, 1987, and the identification on July 13, 1987, as well as the lapse of time between the iden-

and the preliminary hearing, November 4, 1987, render Diane S identification of the Defendant unreasonably suggestive. Defendant also argues that the confrontation was unduly brief and occurred at a distance representing the width of a borough street, thus rendering the identification unreliable. Defendant further claims that the preliminary hearing identification was not wholly independent of the photographic array.

However, Sklarz testified at the suppression hearing that she had direct face and eye contact with Defendant for at least six seconds, under a streetlight at a distance of approximately eighty feet. Sklarz selected the Defendant, with certainty from the third of three arrays. She was adamant that the Defendant was the man she saw on the night in question. Thus, in our opinion, Sklarz's identification sufficiently meets the requirements of the Commonwealth to permit her testimony at trial. Accordingly, Defendant's Motion with respect to Sklarz's identification must be denied.

The second identification witness produced by the Commonwealth was Patricia Gordner. Defendant argues that the lapse of time between the alleged sighting, May 12, 1987, and the photographic identification, July 13, 1987, render the photographic array process unduly suggestive. Defendant also maintains that Gordner's identification was unreliable in that the confrontation was limited to a few seconds in a dark alley.

At the suppression hearing, Gordner testified that she did not see Defendant's face, but was "pretty certain" that it was the Defendant she observed on the night in question. However, later in her testimony she acknowledged that she did not

know whether or not the person observed was the Defendant. She added that the photograph she selected was the only one that "looked like" the person she saw in the alley. Thus, there is significant likelihood that her identification is inaccurate could lead to a misidentification. Therefore, we find the identification unduly suggestive and unreliable. Accordingly, Defendant's Motion to Suppress Gordner's identification must be granted.

The third and final identification witness was Beverly Lynn. Defendant repeats his arguments that the lapse of time between the alleged sighting and the photographic identification renders the identification suggestive and therefore the confrontation was not conducive to a strong identification and thus unreliable.

JUDGE'S CHAMBERS, BLOOMSBURG, PENNA., 717-784-1991
 Lynn testified at the suppression hearing that she sat across from Defendant at a bar for approximately forty-five minutes one evening a couple of weeks prior to the incident. She quickly and without hesitation selected the Defendant from the array. Therefore, we find Lynn's identification sufficient reliable to warrant her testimony at trial. Accordingly, Defendant's Motion to Suppress Lynn's identification must be denied.

Finally, at the Suppression Hearing, Defendant contend that his photograph in the array was unduly suggestive because it contained the words "Aggravated Assault, Simple Assault" printed underneath. However, the three witnesses in question testified that they did not recall the words beneath Defendant's photograph, and that such did not play a part in their identification. Therefore, we find Defendant's argument lacks merit.

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEA
V. : OF THE 26TH JUDICIAL DISTRICT
: OF PENNSYLVANIA
: COLUMBIA COUNTY BRANCH
: CRIMINAL DIVISION
KENNETH A. SHIFFER, : NO. 294 of 1987
DEFENDANT :
SCOTT W. NAUS, ESQUIRE, District Attorney for Commonwealth of Pennsylvania
WILLIAM COSTOPOULOS, ESQUIRE, Attorney for Defendant

ORDER

AND NOW, to wit, this 30th day of June, 1988, Defendant's Motion to Suppress the photographic identification of Patricia Gordner is granted. Defendant's remaining Motions to Suppress are denied.

BY THE COURT:


P.J.D.

Exhibit "B"

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
 vs. : OF THE 26TH JUDICIAL DISTRICT
 : COLUMBIA COUNTY BRANCH, PENNA.
 KENNETH ALLEN SHIFFER, : CRIMINAL DIVISION
 DEFENDANT : NO. 294 of 1987

SCOTT W. NAUS, ESQUIRE, District Attorney for the Commonwealth
 of Pennsylvania

WILLIAM C. COSTOPOULOS, ESQUIRE, Attorney for Defendant

O P I N I O N

The Defendant has been charged with Criminal Homicide, 18 Pa. C.S.A. 2501(a),(b), in the beating death of one Leonard Radziak, at the Hayes Hotel, Berwick, Columbia County, in the early morning hours of May 11, 1987. The Defendant was convicted by a jury of second degree murder on November 18, 1988. The Defendant has filed timely Motions in Arrest of Judgment and for a New Trial. Following submission of briefs and oral argument, Defendant's Motions are presently before us for disposition.

JUDGE'S CHAMBERS, BLOOMSBURG, PENNA. 717-784-1991

The Defendant raises two issues in the Motions as follows:

- I. Defendant contends that the evidence presented at trial, even viewed in a light most favorable to the Commonwealth as verdict winner, is insufficient as a matter of law to sustain the verdict of second-degree murder for the following reasons: a) that the eyewitness identification of Defendant by Diane Szklarz was totally inconsistent with his physical appearance at the time of the incident and otherwise self-contradictory; b) that the blood discovered on Defendant's jacket could not be determined to be human or animal; c) that no motive was shown; and d) no conspiratorial nexus was established between Defendant and George Sheeler.
- II. Following the pre-trial suppression hearing, Defendant also maintains that the Court erred in refusing to suppress the eyewitness identification testimony

of Diane Szklarz which he argues violated his rights under the United States and Pennsylvania Constitutions.

I

In reviewing Defendant's claim that the Commonwealth's evidence was insufficient to sustain a conviction, the test to be applied is whether, viewing all the evidence in a light most favorable to the Commonwealth as verdict winner, and drawing all reasonable inferences favorable to the Commonwealth, there is sufficient evidence to enable the trier of fact to find the existence of every element of the crime beyond a reasonable doubt. Commonwealth v. Jermyn, 516 Pa. 460, 533 A.2d 74 (1987); Commonwealth v. Sneed, 514 Pa. 597, 526 A.2d 749 (1987); Commonwealth v. Holzer, 480 Pa. 93, 389 A.2d 101 (1978); Commonwealth v. Kichline, 468 Pa. 265, 361 A.2d 282 (1976).

JUDGE'S CHAMBERS BLOOMSBURG, PENNA 717-784-1991

In the instant action, the Defendant was found guilty of murder in the second degree for the robbery and beating death of Leonard Radziak. We must review the evidence presented to determine if there was sufficient evidence to warrant finding the Defendant guilty.

The Commonwealth presented the following evidence in an effort to substantiate the finding of guilt. The record revealed that the victim in the instant action was severely beaten. Commonwealth's expert witness, Dr. Isidore Mihalikis, testified that several of the victim's injuries during the course of the beating were caused by a straight, rounded, cylindrical type object. (N.T. 288). The Defendant was spotted jogging, carrying

a pipe, wearing a black "Members Only" type jacket shortly after the time frame within which the crime took place. (N.T. 134-137 150). An individual with the same clothing description, carrying a long cylindrical object was seen leaving the Hayes Hotel immediately after the beating. (N.T. 75-77).

After the Defendant was questioned by the police regarding his ownership of a "Members Only" type jacket, the Defendant directed his girlfriend, Joanne Lutz, to turn over a jacket to the police, (N.T. 213), which jacket did not match the jacket described by the witness. At that point Defendant claimed that he did not possess a "Members Only" style jacket. (N.T. 212). However, the police later discovered a blood-stained "Members Only" jacket in a darkened area of a second closet in Defendant's apartment. (N.T. 216). When further questioned about this second jacket, the Defendant responded that the police would never be able to prove "that it was Lenny's blood." (N.T. 219).

In a separate interview, the Defendant stated to Pennsylvania State Police Trooper Walter Carlson that it would be stupid for one to take \$50 from an old man and leave \$400 on his person. (N.T. 298). The officer then asked the Defendant where he got those figures. The Defendant paused and then answered that he "got them from the newspaper." The officer responded that such figures were not published in the newspaper after which Defendant stated he obtained the information from George Sheeler, who was also charged and later convicted of the

JUDGES CHAMBERS BLOOMSBURG PENNA. 717-784-1991

homicide in question. After the Trooper questioned the Defendant about the fifty-dollar discrepancy, the Defendant did not answer directly but simply claimed that he was at home the entire evening of the homicide. (N.T. 298).

Considering all of the evidence and viewing it in the light most favorable to the Commonwealth, as well as taking all reasonable inferences that may be deduced therefrom, one could fairly conclude beyond a reasonable doubt that the Defendant is guilty of murder in the second degree.

That evidence includes testimony from an identification witness placing the Defendant at the scene of the crime with an object which caused the death of the victim. It also includes Defendant's possession of a blood-stained jacket, which Defendant earlier denied owning, as well as Defendant's suspicious knowledge of the amount of money in the victim's possession at the time of the killing. That monetary information was only otherwise known by the police.

Granted there is no direct evidence of the crime committed by the Defendant in this case. However, the Commonwealth need not prove the homicide by direct evidence, but is often required to prove homicide by circumstantial evidence.

Commonwealth v. Smith, Supreme Court of Pennsylvania, slip op.

December 22, 1989.

Accordingly, we conclude that the evidence produced at trial is sufficient to sustain the conviction of second degree murder. Therefore, we find Defendant's first argument to be without merit.

II

Defendant also maintains that the suppression court erred in refusing to suppress the eyewitness identification testimony of Diane Szklarz, which in turn violates Defendant's rights under the United States and Pennsylvania Constitutions. We addressed and decided those issues while denying Defendant's Suppression Motion in an Opinion and Order of Court dated June 30, 1988, which are incorporated herein by reference, and made a part hereof.

Accordingly, we find that Defendant's second argument in his Post-Trial Motions in Arrest of Judgment and for a New Trial is meritless.

For all the above reasons, we deny Defendant's Motions in Arrest of Judgment and for a New Trial.

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEA
vs. : OF THE 26TH JUDICIAL DISTRICT
: COLUMBIA COUNTY BRANCH, PENN
: CRIMINAL DIVISION

KENNETH ALLEN SHIFFER, : NO. 294 of 1987
DEFENDANT :
:

SCOTT W. NAUS, ESQUIRE, District Attorney for the Commonwealth
of Pennsylvania

WILLIAM C. COSTOPOULOS, ESQUIRE, Attorney for Defendant

ORDER OF COURT

AND NOW, to wit, this 9th day of January, 1990,
Defendant's Post-Trial Motions in Arrest of Judgment and for
New Trial are denied. Defendant shall appear before this Court
February 12, 1990 at 11:30 a.m. for sentencing.

BY THE COURT:

Jay W. Myers P.C.

JUDGE'S CHAMBERS, BLOOMSBURG, PENNA. 717-784-1991

Exhibit "C"

J. S31011/90

COMMONWEALTH OF PENNSYLVANIA

v.

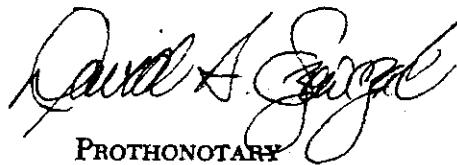
KENNETH ALAN SHIFFER,
Appellant

: IN THE SUPERIOR COURT
: OF PENNSYLVANIA
: NO. 00676 PHILADELPHIA 1990
:
:

JUDGMENT

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court
that the judgment of the Court of Common Pleas of COLUMBIA County
be, and the same is hereby AFFIRMED.

BY THE COURT:


PROTHONOTARY

Dated: OCTOBER 18, 1990

J. S31011/90

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT
	:	OF PENNSYLVANIA
V.	:	NO. 00676 PHILADELPHIA 1990
KENNETH ALAN SHIFFER,	:	
Appellant	:	

Appeal from the Judgment of Sentence February 12, 1990
 In the Court of Common Pleas of Columbia County,
 Criminal Division No. 294-87

Before: TAMILIA, JOHNSON and CERCONE, JJ.

MEMORANDUM:

FILED OCT 18 1990

This is a direct appeal from a judgment of sentence entered after a jury found appellant, Kenneth Allen Shiffer, guilty of murder in the second degree¹ in connection with the beating death of Leonard Radziak in the early morning hours of May 11, 1987. Appellant's post-trial motions were denied by the lower court and he was sentenced to undergo imprisonment in a state correctional institution for the term of his natural life. The instant timely appeal followed. For the reasons set forth below, we affirm.

Appellant has raised two issues for our consideration:

- A. Whether the suppression court erred in not suppressing the eyewitness identification testimony of Diane Szklarz, which violated appellant's rights under the United States and Pennsylvania Constitutions?
- B. Whether the evidence presented at trial, even viewed in a light most favorable to the Commonwealth as verdict winner, is insufficient as a matter of law to sustain the verdict of second-degree murder in that the eyewitness identification of appellant by Diane Szklarz was totally inconsistent with his physical appearance at the time of the incident and otherwise self-contradictory; the blood discovered on

¹18 Pa. C.S.A. § 2502 (b).

J. S31011/90 -2-

appellant's jacket could not determine to be [sic] human or animal; no motive was shown; and no conspiratorial nexus was established between appellant and George Sheeler.

We have carefully reviewed the parties' briefs and the record certified on appeal. We find that the lower court's discussion and resolution of appellant's first argument is both clear and concise. We affirm on the basis of the lower court's opinion filed June 30, 1988 with regard to this issue.

Appellant next argues that the evidence adduced against him at trial was insufficient to sustain a conviction for second degree murder. It is well settled that when sufficiency of the evidence claims are raised, "an appellate court must review the evidence presented and all reasonable inferences drawn therefrom in a light most favorable to the verdict winner and determine whether on the record there is a sufficient basis to support the challenged conviction." Commonwealth v. Madison, 501 Pa. 485, 490, 462 A.2d 228, 231 (1983) (citations omitted). The proper application of this test requires us to evaluate the entire trial record and all evidence actually received, in the aggregate and not as fragments isolated from the totality of the evidence.

Commonwealth v. Harper, 485 Pa. 572, 576, 403 A.2d 536, 538 (1979). See also Commonwealth v. Griscavage, 512 Pa. 540, 517 A.2d 1256 (1986) (explicating appropriate application of standard of review set forth in Harper, supra). This standard means that we must view the evidence in the light most favorable to the Commonwealth as the verdict winner, and drawing all proper inferences favorable to the Commonwealth, determine if the jury

J. S31011/90 -3-

could reasonably have concluded that all of the elements of the crime were established beyond a reasonable doubt. Commonwealth v. Edwards, 521 Pa. 134, 143, 555 A.2d 818, 823 (1989). We note that the trier of fact is free to believe all, part, or none of the evidence presented, Griscavage, supra at 546, 517 A.2d at 1259, and that "the Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence." Commonwealth v. Harper, supra at 576, 403 A.2d at 538.

In order to sustain a conviction for second degree murder, the Commonwealth is required to prove that a criminal homicide was committed while the defendant was engaged as a principal or an accomplice in the perpetration of a felony. 18 Pa. C.S.A. § 2502 (b). Our careful scrutiny of the certified record in the instant case has convinced us that the lower court's comprehensive analysis of the evidence adduced at trial is correct. We therefore affirm on the basis of the lower court opinion filed January 10, 1990 concerning this issue.

Judgment of sentence affirmed.

Exhibit "D"



Supreme Court of Pennsylvania

Middle District

CHARLES W. JOHNS, ESQUIRE
PROTHONOTARY

MILDRED E. WILLIAMSON
DEPUTY PROTHONOTARY

434 MAIN CAPITOL BUILDING
P.O. BOX 624
HARRISBURG, PENNSYLVANIA 17108
(717) 787-6181

June 28, 1991

William C. Costopoulos, Esq.
831 Market Street
P.O. Box 222
Lemoyne, PA 17043

**Re: Commonwealth of Pennsylvania
v. Kenneth Alan Shiffer, Petitioner
No. 1017 E.D. Allocatur Docket 1990**

Dear Mr. Costopoulos:

This is to advise that the following Order has been entered
for the Petition for Allowance of Appeal filed in the above-
captioned matter:

"June 27, 1991, Petition denied
Per Curiam"

Sincerely yours,

Shirley Bailey
Shirley Bailey,
Chief Clerk

spb

xc: Hon. Jay W. Myers
Scott W. Naus, Esq.
Clerk of Courts - Columbia County
(No. 294 of 1987)
Prothonotary's Office - Superior Court
(No. 676PHL90)

Exhibit "E"

COMMONWEALTH OF PENNSYLVANIA

vs

KENNETH ALAN SHIFFER

IN THE COURT OF COMMON PLEAS
FOR THE 26TH JUDICIAL DISTRICT
COLUMBIA COUNTY BRANCH,
PENNSYLVANIA
CRIMINAL DIVISION

Defendant

CASE NO: 294 OF 1987

CHARGE: CRIMINAL HOMICIDE

WILLIAM S. KREISHER, ESQUIRE, Attorney for the Commonwealth
Pennsylvania

HUGH SUMNER, ESQUIRE, Attorney for the Defendant

FIFTH DISTRICT
PROTHONOTARY
CLERK'S OFFICE

Oct 23 1997
2:10 P.M. '97

OPINION

October 28, 1997, Keller, P.J.

This matter is before the Court for consideration of Defendant's Petition for Relief under the Post Conviction Relief Act, 42 Pa. C.S.A. § 9541 et seq. We held an evidentiary hearing at which time the Defendant was represented by counsel other than prior counsel.¹ After a careful consideration of the entire record and the applicable law, we are convinced that the Defendant's Petition must be denied.

1. At the conclusion of the initial hearing and before our decision, the Commonwealth moved to reopen the record for additional testimony by trial counsel on the sole issue of why the Defendant did not testify on his own behalf. The Defendant opposed the motion, and after hearing argument, we will grant the same. The motion is granted in the interest of justice to make certain that all parties have every opportunity to pursue, as well as oppose, the Defendant's claims fully. By granting the motion, we will consider the additional testimony in our discussion on the merits to follow. Commonwealth v. Tharp, 575 A.2d 557, 558 (Pa. 1990).

We make the following findings of fact:

1. The Defendant was arrested on or about October 9, 1987, and charged with Criminal Homicide; 18 Pa.C.S.A. § 2501 (a) (b).
2. Following a Preliminary Hearing, the Defendant was held for Court, and on December 1, 1987, an Information was filed on this charge.
3. Defendant's case came on for jury trial before the Honorable Jay W. Myers on November 15, 1988, and Defendant was found guilty by the jury of Murder in the Second Degree.
4. Motions for a New Trial and in Arrest of Judgment were filed. After consideration thereof, these Motions were denied.
5. On February 12, 1990, the Defendant was sentenced to a period of life imprisonment.
6. The Judgment of sentence was appealed to the Pennsylvania Superior Court who, by its Memorandum Opinion, affirmed the sentence on October 18, 1990.
7. From the affirmance by the Superior Court, Defendant petitioned for Allowance of Appeal to the Pennsylvania Supreme Court, which was denied, June 27, 1991.

DISCUSSION

In the instant petition, Defendant contends that he is entitled to relief on the basis that trial counsel, William C. Costopoulos, was ineffective as follows:

1. For failing to permit the Defendant to testify in his own behalf.
2. For failing to object to the trial Court's charge defining reasonable doubt.
3. For withdrawing Defendant's Motion for a Change of Venue or Venire.
4. For failing to impeach the police officer concerning the amount of money on the victim's person after knowledge that the amount appeared in the newspaper when Defendant's admitted knowledge of the amount was used to show his guilty knowledge.

The contention that trial counsel failed to render effective assistance is the most frequent claim of post conviction defendants. In considering this claim several clear standards exist. At the outset, counsel is presumed to have acted effectively. Commonwealth v. Pierce, 527 A.2d 973 (Pa. 1987). The burden is always on the Defendant to prove counsel ineffective; the burden never shifts to the Commonwealth to

prove counsel competent. Commonwealth v. Hudson, 485 A.2d 487 (Pa. Super. 1984).

To rebut the presumption of competency of counsel and to carry his burden, the defendant must prove: (1) that he had some claim of arguable merit which was not raised and (2) that there was no reasonable basis for counsel's actions or inaction. Commonwealth ex rel Washington v. Maroney, 427 Pa. 599 (1967). Once the Defendant has satisfied these two tests, he must show that he was so prejudiced by counsel's actions that the verdict has become unreliable. Commonwealth v. Pierce, supra.

I

Initially, the Defendant submits that trial counsel was ineffective for refusing to permit him to testify on his own behalf. If this were true, Defendant's assertion would have merit, since the ultimate decision in this regard must be made by the client himself. Commonwealth v. Rowles, 462 A.2d 619 (Pa. 1983). However, we are satisfied that counsel did not prevent the Defendant from testifying but, after advising him of the consequences, left the Defendant to make the ultimate decision.

The issue then is whether counsel's advise not to take the stand was so unreasonable as to vitiate a knowing and

intelligent decision by the Defendant. Commonwealth v. Fowler, 523 A.2d 784 (Pa. Super. 1987).

Counsel's advise not to testify, so as to be permitted to assert his innocence, was based upon his concern that to do so would open the door and permit the Commonwealth to examine him concerning the blood found on the Defendant's jacket. Although the Commonwealth was unable to tie the blood to the crime charged, its presence on Defendant's jacket would have admittedly required him to testify that it had gotten there during an aggravated assault for which he had previously been convicted.

This was the only way that Defendant's prior conviction would have become known to the jury. This prior conviction for aggravated assault was not admissible otherwise to impeach, since it did not constitute a crime of dishonesty or false statement. Commonwealth v. Grimm, 249 Pa. Superior Ct. 441 (1977).

Counsel's concern about opening the door and permitting Defendant's prior conviction for assaultive conduct to be introduced, when coupled with his opinion that the Commonwealth was unable to sustain its burden to convict, and his concern about the Defendant's demeanor on the witness stand, reasonably justified his advise that the Defendant not take the stand.

We are satisfied beyond all doubt that the Defendant, a man of prior criminal experience, knowingly and intelligently made the decision not to testify. We will not second-guess both the advice given by counsel nor Defendant's ultimate decision to follow this advice. The Defendant must bear the burden of his decision not to testify and cannot shift the blame after having received competent advice concerning the matter. Commonwealth v. Harper, 614 A.2d 1180 (Pa. Super. 1992).

II

The Defendant next contends that trial counsel, by failing to object to the Court's charge on reasonable doubt, was ineffective. It is Defendant's contention that the Court's charge was defective because it failed to instruct the jury that reasonable doubt could arise from the lack of evidence. In all other respects, Defendant concedes that the charge properly defined reasonable doubt.

It is true that the Suggested Standard Jury Instructions, as well as a number of other jurisdictions, require that the jury should be instructed that "a reasonable doubt may arise not only from the evidence introduced, but from the lack of evidence presented." Pennsylvania has never required that this form of instruction be included.

Commonwealth v. Evancho, 175 Pa. Superior Ct. 225 (1954).

Since the trial Court's charge was correct, trial counsel cannot be faulted for failing to object.

III

The Defendant's third assertion is that trial counsel was ineffective by withdrawing his motion for a change of venue or venire. Counsel justified this decision by explaining that he felt it was the better strategy to withdraw the motion in exchange for the Court's grant of individual voir dire.

Since Pa.R.Crim.P. 1106 (E) does not mandate individual voir dire, except in capital cases, we will not engage in hindsight second-guessing of counsel's strategy in this regard. Commonwealth v. Thomas, 526 A.2d 380 (Pa. Super. 1987).

Nor has the Defendant met his burden of demonstrating that he was prejudiced by counsel's withdrawal of the motion. The murder occurred on May 11, 1987, and the Defendant did not come to trial until November 15, 1988, (seventeen months later). As demonstrated by the relative ease with which the jury was selected, in a matter of about nine hours of individual voir dire, any prejudice which might have been generated by pre-trial publicity had long before trial been dissipated.

IV

Finally, the Defendant contends that counsel was ineffective because he failed to "impeach" the police officer who testified to a statement made to him by the Defendant during which the Defendant told him of the amount of money, which had been in the possession of the victim. This fact as argued by the Commonwealth, demonstrated Defendant's guilty knowledge. On the other hand, the Defendant contended that he became aware of this fact because it was contained in a newspaper account of the murder.

From our review of the trial record, there does not appear to have been any real confusion about how the Defendant obtained knowledge of the money in the victim's possession. The police officer who testified to these facts readily admitted that the Defendant told him, when questioned how he obtained knowledge of the amount, that he had read the newspaper reports and it was for this reason that he had this knowledge.

Once again, we find no quarrel with trial counsel's failure to further pursue this matter. There was no need, as the Defendant suggests, to beat a dead horse. Defendant's mere suggestion falls far short of carrying his burden to overcome the presumption of counsel's competency.

Exhibit "F"

J.S75017/98

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee	:	
v.	:	
KENNETH ALAN SHIFFER,	:	
Appellant	:	No. 5050 Philadelphia 1997

Appeal from the Order October 28, 1997
In the Court of Common Pleas of Columbia County
Criminal No. 294 of 1987

BEFORE: POPOVICH, STEVENS, JJ. and CERCONE, P.J.E.

MEMORANDUM:

| FILED FEB 10 1999

This is an appeal from the denial of Appellant's Post Conviction Relief Act petition entered in the Court of Common Pleas of Columbia County on October 28, 1997, following Appellant's conviction of second degree murder. We affirm.

A review of the record reveals the following procedural and factual history: Appellant was arrested on October 9, 1987, and charged with criminal homicide. He was convicted by a jury of second degree murder on November 18, 1988, and, after post-trial motions were filed and denied, he was sentenced to life imprisonment on February 12, 1990. Appellant filed a direct appeal to this Court, which affirmed the judgment of sentence on October 18, 1990. Petition for allowance of appeal to the Pennsylvania Supreme Court was denied on June 27, 1991.

J.S75017/98

On January 6, 1997, represented by new counsel, Appellant filed a timely petition for collateral relief pursuant to the Post Conviction Relief Act (PCRA).¹ A hearing was held before the lower court on June 26, 1997, and, pursuant to the lower court's grant of the Commonwealth's motion for taking additional testimony, a second hearing was held on October 15, 1997. Appellant's PCRA petition was subsequently denied on October 28, 1997. On November 20, 1997, Appellant appealed the denial of his PCRA petition to this Court, raising the following issues for our review:

1. WHETHER TRIAL COUNSEL WAS INEFFECTIVE FOR FAILURE TO PERMIT DEFENDANT TO TESTIFY IN HIS OWN BEHALF AT TRIAL.
2. WHETHER TRIAL COUNSEL WAS INEFFECTIVE FOR FAILURE TO OBJECT TO A JURY INSTRUCTION WHICH DID NOT ADEQUATELY DEFINE REASONABLE DOUBT.
3. WHETHER TRIAL COUNSEL WAS INEFFECTIVE FOR WITHDRAWING A PRE-TRIAL MOTION FOR CHANGE OF VENUE OR VENIRE.
4. WHETHER TRIAL COUNSEL WAS INEFFECTIVE FOR FAILURE TO IMPEACH POLICE OFFICER WITNESSES ABOUT THE FACT THAT THE AMOUNT OF MONEY IN POSSESSION OF THE VICTIM WAS DISCLOSED IN A NEWSPAPER ARTICLE WHEN SAID FACT WAS USED TO SHOW GUILTY KNOWLEDGE BY DEFENDANT IN THE CASE.
5. WHETHER THE PCRA COURT ABUSED ITS DISCRETION IN PERMITTING THE COMMONWEALTH TO REOPEN ITS CASE AND PRESENT ADDITIONAL TESTIMONY FOR THE PURPOSE OF CLARIFYING THE TESTIMONY OF A WITNESS.

Appellant's brief at 3.

¹ 42 Pa.C.S.A. §§ 9541-9546.

J.S75017/98

We will first address Appellant's fifth claim that the PCRA court abused its discretion in permitting the Commonwealth to reopen its case and present additional testimony for the purpose of clarifying the testimony of Appellant's trial counsel. This issue is tied to Appellant's claim that his trial counsel was ineffective in failing to permit Appellant to testify on his own behalf. Because we may reach a conclusion with regard to this ineffectiveness claim without relying on the testimony at issue, any error on the part of the PCRA court in allowing the testimony was harmless error.

Commonwealth v. Robinson, ___ Pa. ___, ___, 721 A.2d 344, 350 (1998) ("Harmless error exists where: (1) the error did not prejudice the defendant or the prejudice was de minimis; (2) the erroneously admitted evidence was merely cumulative of other untainted evidence which was substantially similar to the erroneously admitted evidence; or (3) the properly admitted and uncontradicted evidence of guilt was so overwhelming and the prejudicial effect of the error was so insignificant by comparison that the error could not have contributed to the verdict.").

Turning to Appellant's ineffectiveness of counsel claims, we operate under a well-established standard. This Court's review of a post-conviction court's grant or denial of relief is limited to determining whether the court's findings are supported by the record and the court's order is otherwise free of legal error. **Commonwealth v. Yager**, 685 A.2d 1000, 1003 (Pa.Super. 1996) (citations omitted). When claiming that relief is due under the PCRA

J.S75017/98

because of ineffective assistance of counsel, it is the petitioner's burden to plead and prove by a preponderance of the evidence that the sentence in dispute was caused by ineffective assistance of counsel which so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place. 42 Pa.C.S.A. § 9543(a)(2)(ii); ***Commonwealth v. Whitney***, 708 A.2d 471 (Pa.Super. 1998). Additionally, there is a presumption that counsel is effective. ***Commonwealth v. Garnett***, 613 A.2d 569 (Pa.Super. 1992). To defeat that presumption, a petitioner must prove (1) that the course of action the petitioner alleges counsel was ineffective for failing to pursue had arguable merit; (2) that counsel had no reasonable basis for the action or omission in question; and (3) that the act or omission prejudiced the petitioner to the point that but for the act or omission the outcome of the case would have been different. ***Commonwealth v. Appel***, 547 Pa. 171, 689 A.2d 891 (1997); ***Commonwealth v. Fowler***, 703 A.2d 1027 (Pa.Super. 1997).

In the case *sub judice*, Appellant initially alleges that his trial counsel was ineffective for failing to permit Appellant to testify on his own behalf. We find this allegation to be without merit.

The decision whether to testify in ones' own behalf is ultimately to be made by the accused after full consultation with counsel. In order to support a claim that counsel was ineffective for not "putting" the appellant on the witness stand, the appellant must demonstrate either that (1) counsel interfered with his client's freedom to testify, or (2) he gave specific advice so unreasonable as to vitiate a knowing and intelligent decision by the client not to testify on his own behalf.

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Commonwealth v. Harper, 614 A.2d 1180, 1186-1187 (Pa.Super. 1992). Appellant acknowledges that his trial counsel did not interfere with Appellant's freedom to testify. Appellant's brief at 8. He asserts, however, that his trial counsel gave him advice which was so unreasonable as to vitiate a knowing and intelligent decision not to testify. Appellant's trial counsel testified on June 26, 1997, that he had expressed his opinion to Appellant that it was in Appellant's best interest not to take the stand in his own defense. N.T. 6/26/97 at 23. Trial counsel explained that he had discussed this with Appellant, but that Appellant made the final decision not to testify. N.T. 6/26/97 at 23. Trial counsel gave the following three reasons for his opinion that Appellant should not testify:

My basis for that is [Appellant] had a prior criminal conviction of aggravated assault and battery. And . . . I believe the Commonwealth had made an efforts [sic] to get that prior conviction into the record. And, we were successful in keeping it out of the record. I didn't want this Jury to know that [Appellant] had this assault in his past.

I knew that if I called him to the witness stand I was opening the door for what I had kept out . . .

N.T. 6/26/97 at 22. In addition, trial counsel indicated that Appellant's anticipated testimony that he had been home with his wife at the time of the killing was cumulative of testimony given by Appellant's wife that Appellant had been home with her, and also cumulative of the testimony state troopers called as Commonwealth witnesses who testified that Appellant told them he had been home with his wife and was innocent of the crime

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charged. N.T. 6/26/97 at 24. Finally, trial counsel testified that after spending a significant amount of time in Appellant's presence, he was convinced that because of Appellant's "persona," Appellant's testimony would not be well-received by the jury and he might falter under cross-examination and damage his case. N.T. 6/26/97 at 24-25.

Without addressing whether trial counsel was correct in his belief that Appellant's testimony would put his prior conviction before the jury, we are satisfied that in light of the testimony of Appellant's wife and the state trooper's, as well as trial counsel' opinion with regard to how Appellant would be perceived by the jury and what Appellant might say, trial counsel's advice was not "so unreasonable as to vitiate a knowing and intelligent decision by the client not to testify on his own behalf." *Harper*, 614 A.2d at 1186-1187. As such, Appellant's claim with regard to this issue is without merit, and we conclude that trial counsel was not ineffective for expressing [redacted] opinion to Appellant that it was not in Appellant's best interest to testify on his own behalf.

Appellant next alleges that his trial counsel was ineffective for failing to object to a jury instruction which did not adequately define reasonable doubt because it failed to instruct the jury that reasonable doubt could arise from the lack of evidence. This argument is without merit.

Whether a jury instruction on reasonable doubt must include a statement regarding lack of evidence was addressed by a panel of this Court

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in **Commonwealth v. Evancho**, 103 A.2d 289 (Pa.Super. 1954). In that case, the trial judge's charge on reasonable doubt included, among other things, a statement that "[a] reasonable doubt is a doubt that would grow out of the evidence produced in this case...," but did not include a mention of the significance of a lack of evidence. In finding this instruction sufficient, the Court noted that:

In a number of jurisdictions it has been held that the jury should be instructed that "a reasonable doubt may arise not only from the evidence introduced, but from lack of evidence." It has frequently been held that instructions are not erroneous merely for failure to state in express terms that reasonable doubt may arise from lack of evidence. Pennsylvania has never required this form of charge.

Evancho, 103 A.2d at 291 (citations omitted). The Court further found that:

[t]here is very little difference between saying, "if the evidence produced on the part of the Commonwealth does not of itself convince the jury that the defendants are guilty beyond a reasonable doubt they should acquit," . . . and saying, "A reasonable doubt may arise not only from the evidence but it may arise from a want of evidence or a failure to produce evidence that the prosecution could produce," . . . If the jury is not convinced beyond a reasonable doubt from the evidence produced does this reasonable doubt not arise from the want of sufficient credible evidence?

Evancho, 103 A.2d at 292 (citations omitted). Because we find that the lower court's jury instruction adequately and accurately reflected the law, it was not ineffective for Appellant's trial counsel to choose not to object to it.

Commonwealth v. Henry, 550 Pa. 346, 381, 706 A.2d 313, 330 (1997)

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("Counsel will never be deemed ineffective for failing to raise a meritless claim.")

Appellant's third ineffectiveness claim centers around his allegation that in light of the extensive and prejudicial media coverage of his case, trial counsel erred in withdrawing a motion for change of venue or venire. A review of the record shows that trial counsel withdrew the motion in question in exchange for the right to conduct individual *voir dire* of the prospective jurors. At the June 26, 1997 hearing on Appellant's PCRA petition, his trial counsel testified that he chose this course of action because it was his judgment that individual *voir dire* and liberal questioning of the prospective jurors offered by the lower court was much more beneficial than pursuing the motion for change of venue or venire. As such, even if we were to assume that this claim is of arguable merit in that Appellant could show that a change of venue or venire was warranted, we find that Appellant failed to show that there was no reasonable basis for his trial counsel's tactics, or that he was actually prejudiced by those tactics. ***Commonwealth v. Birdsong***, 538 Pa. 587, 650 A.2d 26 (1994); ***Commonwealth v. Weakland***, 417 A.2d 690 (Pa.Super. 1979). This claim of ineffectiveness must fail.

Appellant also alleges that his trial counsel was ineffective for failing to "impeach police officer witnesses about the fact that the amount of money in possession of the victim was disclosed in a newspaper article when said fact

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was used to show guilty knowledge by defendant in the case." Appellant's brief at 14. Because Appellant's convoluted argument on this issue does not lend itself to paraphrasing, we must state it in its entirety:

Defendant's statement to the police indicated that he had read that the victim was found with \$400.00 on his person. Defendant testified at post-conviction hearing that he informed trial counsel about a Press Enterprise Article dated May 14, 1997 introduced as exhibit at post-conviction hearing and attached hereto.^[2] Notes of testimony Post Conviction Hearing Act Hearing, June 26, 1997, at page 7. The article reports that "at this point, theft has been ruled out as a motive because the victim had \$400.00 in his possession, McCormick said." Despite being proffered this information by Defendant, trial counsel did not cross-examine police officer witnesses about this obvious source of information as to money on the victim.

The importance of the testimony about Defendant's guilty knowledge cannot be overemphasized. Judge Meyers' opinion in support of denial of post-trial motions^[3] noted that the authorities testified that such figures were not published in the newspaper and yet the Defendant claims to have gathered the information from that source. Opinion and Order of Judge Myers dated January 09, 1990 at page 3. Trial counsel, by utilizing the article would have been able to establish that the Commonwealth had publicly maintained the position that \$400.00 was in fact found on the victim and expose the \$450.00 for the rouse that it was. Because trial counsel did not confront Trooper Carlson with the inconsistency, he was unable to get to the cross-examination and argument that the \$50.00 additional dollars never in fact existed. Raymond Fenstermacker testified that he saw the victimflash [sic] four (4) one hundred dollar bills. Notes of testimony, Jury Trial, November 14, 15, 16, 17, 18, 1998. Notes of testimony at page 54. However, the failure

² Appellant has failed to attach the article. Although the article may have been admitted as an exhibit during the June 26, 1997 PCRA hearing, a review of the record reveals that the article is not included. Appellant's trial counsel testified at that hearing that the newspaper reported that the victim had four hundred dollars (\$400.00) in his possession. N.T. 6/26/97 at 29-30.

³ The certified record transmitted to this Court does not contain the opinion referenced by Appellant.

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to vigorously pursue this issue left the jury with the belief that the police had information about an additional \$500.00 that had never been released to the press.

Given the circumstantial nature of the case against Defendant, it was incumbent upon trial counsel to have reviewed the article and used it in vigorous cross examination of its [sic] police witness. His failure to do so had prejudiced the Defendant in such a way that the truth determining process was undermined.

Appellant's brief at 14-15.

We cannot agree that Appellant has presented a viable ineffectiveness of counsel claim on this issue. Appellant attempts to show that "trial counsel, by utilizing the article, would have been able to establish that the Commonwealth had publicly maintained the position that \$400.00 was in fact found on the victim and expose the \$450.00 for the rouse that it was." He has simply not provided this Court with the information necessary to draw such a conclusion, and, as such, we are unable to conclude that this claim is of arguable merit, that his counsel tactics with regard to his cross-examination of Trooper Carlson were not reasonable and aimed at protecting Appellant's best interest, or that Appellant was actually prejudiced in this regard.

For the reasons discussed *supra*, the order of the PCRA court is affirmed.

Affirmed.

Exhibit "G"

9:09 P.M.

Appeal Docket Sheet**Superior Court of Pennsylvania****Docket Number:** 5050 PHL 1997**Page 4 of 4****August 29, 2000****SESSION INFORMATION**

Journal Number: J-S75017-98

Consideration Type: Submitted on Briefs-Panel

Date Listed/Submitted: October 26, 1998

Panel Composition:

The Honorable Zoran Popovich, Judge

The Honorable Correale F. Stevens, Judge

The Honorable William F. Cercone, Judge

DISPOSITION INFORMATION

Related Journal Number: J-S75017-98

Judgment Date: 2/10/99

Disposition Category: Decided

Disposition Author: Per Curiam

Disposition: Affirmed (Decided)

Disposition Date: 2/10/99

Dispositional Comments:

Dispositional Filing:	Memorandum Opinion	Author:	Per Curiam
Filed Date:	2/10/99	Judge: _____	

Vote: _____

SUPREME COURT INFORMATION

Appeal Type: Pet. for Allowance of App

PAA Filed Date: March 10, 1999

Allocatur Docket No.: 296 MAL 1999

Allocatur Disposition Date: Friday, December 3, 1999

Allocatur Disposition: Order Denying Petition for Allowance of Appeal

Appeal Docket No.:

Date Record Sent to Supreme Court:

Date of Supreme Court Disposition:

Supreme Court Disposition:

Exhibit "H"

5 MR. NAUS: Our first witness will be handled
6 Mr. Knecht. We call Lawrence Laubach.

7 LAWRENCE H. LAUBACH, Called, sworn according
law, and examined by Mr. Knecht.

DIRECT EXAMINATION

10 BY MR. KNECHT:

Q Would you state your name for the record, [REDACTED]

12 A Lawrence H. Laubach.

13 Q Mr. Laubach, where do you live?

A I reside at Hayes Hotel, Room number three.

15 Q Is that in Berwick?

16 A Berwick.

Q How long have you lived at Hayes Hotel?

18 A It will be four years this March.

19 Q Do you work?

20 A No, retired.

Q. Where did you go?

22 A Berwick Publ

23 District.

Q You say you have lived at Hayes Hotel

1 A It will be four years in March.

2 Q Will you describe your living quarters at
3 Hayes Hotel?

4 A It is just, more or less--I got a bureau in
5 there and cot.

6 Q Is it one room?

7 A One room, yes.

8 Q No one else lives in that room with you?

9 A No, it's just a single room.

10 Q Do you know how many other rooms are in Hay
11 Hotel?

12 A There are six other ones for rent. There are
13 some upstairs, but they don't rent them out no more.

14 Q When you say "upstairs," how many floors are
15 there in the Hayes Hotel?

16 A There is a basement, then a bar and dining
17 room on the first floor, then the rooms they rent are on
18 the second floor and the third floor, attic rooms, they
19 don't rent them out no more.

20 Q Would it be fair to say that the rooms you
21 spoke of as being for rent are on the second floor?

22 A Second floor, yes.

23 Q No one lives on the third floor:

24 A No.

25 Q The first floor would be the dining room and

1 the bar?

2 A That's right.

3 Q Did you know Leonard Radziak?

4 A Yes, I did.

5 Q Where did you come to know him?

6 A Well, when I out the Hotel, that is the first
7 I met him. He was in charge of the rooms upstairs. So,
8 that is how I met him.

9 Q Did he live there before you did?

10 A Yes, he did.

11 Q You siad he had charge of the rooms, what does
12 that mean?

13 A His duties was to get us clean clothes. Th
14 is a laundromat. He would come every Tuesday and Wednes
15 If you had a complaint, you were supposed to take it to
16 and he would see the owner.

17 Q What was your relationship with Leonard?

18 A Lenny? We were good friends, after I moved
19 there and we got to know one another, we were good friend.

20 Q I understand he had a nick-name for you?

21 A The first day I went there he said, "What's
22 your name?" I said, "Lawrence Laubach", he said, "I'm
23 going to call you Lou" he says, "for short." Then he
24 started calling me Lou and everyone else around there.
25 That's how they nickname you.

1 Q They nicknamed you Louie?

2 A Lou. I used to call him Lenny the Pollock
3 he used to call me Louie the Kraut, that's how that star

4 Q He called you "Louie the Kraut"?

5 A We would kid one another. I used to call him
6 "Lenny the Pollock" and he would call me "Louie the Kraut"

7 Q I would take you back to Mother's Day of 19⁴⁸
8 I think we have already established that you were living
9 there at that time?

10 A Yes, I was.

11 Q Was Lenny living there also?

12 A Yes he was.

13 Q That afternoon, did you have occasion to see
14 Lenny at all?

15 A Let's see, that was on Sunday. Him and one
16 of the other fellows went out. That was on the 11th.

17 Q This was on Mother's Day, on Sunday? I
18 believe it was May 10th?

19 A Anyhow him and one of the other fellows wen
20 out to the club and they come home, I would say about
21 four o'clock.

22 Q Do you know what time he left?

23 A No, I couldn't tell you what time he left.

24 Q When you say "one of the other fellows,"
25 who was that?

1 A Gary Heimbach.

2 Q When you say "one of the other fellows", does
3 Gary lived there also?

4 A Yes he does.

5 Q Do you know where they went?

6 A They went up to that club on Freas Avenue,
7 then they come home about four o'clock. I heard them com
8 home.

9 Q Did both of them come home?

10 A Yes, they both come home. I didn't talk to
11 them, but I heard them.

12 Q When you say you "heard them," how is it you
13 can know by hearing that it is them?

14 A Lenny's got a loud, shrill voice. It's not
15 hard to hear him, you know what I mean.

16 Q Have you heard that voice before?

17 A Oh, yes.

18 Q So it was approximately around four o'clock
19 when they came back?

20 A I would say it was around four o'clock they
21 came back.

22 Q Did you see or hear Lenny any time after tha

23 A No, well I heard--

24 Q See or hear?

25 A I didn't see him, no, but I heard him leave

1 that evening.

2 Q What time, if you remember, did you hear h
3 leave that evening?

4 A It was between 9:00 and 9:30. He was with
5 another person. I couldn't--I don't know who it was.

6 Q How do you know that it was Lenny leaving
7 around that time?

8 A I could tell his voice.

9 Q Did you hear his voice?

10 A Yes.

11 Q Did you recognize that as Lenny's voice?

12 A Yes, I can tell his voice because he had a
13 loud voice.

14 Q Incidentally, are you familiar with Gary's
15 voice also?

16 A Gary's, yes.

17 Q Gary would have a distinctive voice, wouldn

18 A Yes, he would.

19 Q Was it Gary that he left with then around 9
20 or 9:30?

21 A I could tell Gary's voice.

22 Q Did you hear another voice?

23 A Yes. The other voice was very tough, very

24 Q Did you recognize that as anybody whose vo
25 you recognized that lived there?

1 A I couldn't recognize the voice, but whoever
2 was, talked very low.

3 Q They talked very low?

4 A Very low.

5 Q Let me clarify that. Did they have a low
6 voice, or do you mean they were talking quietly?

7 A They talked, I'd say, very quietly.

8 Q Did you happen to hear any of the conversat

9 A Yes, I did. I heard them come out, we had
10 little puppy, so the little puppy came out, and then the
11 said--Lenny said, "Get back in there, you can't go with
12 So he put the puppy back in. There is a vacant room rig
13 next to Lenny's. They stopped there momentarily and the
14 were discussing something, but I couldn't get what they
15 were discussing, and then they went a little further, th
16 Lenny said, "I'd like to get paint and paint this hall t
17 summer." Whoever it was said "What color would you like
18 paint it?" And then he said he didn't know. They said,
19 "that would be nice." From there they went on out. And
20 that was between 9:00 and 9:30.

21 Q That would have been Mother's Day evening?

22 A Yes, it would.

23 Q What did you do the rest of the night?

24 A I went to bed around 11:00 o'clock. It was
25 about quarter of 1:00 a strange noise woke me.

1 Q What did the strange noise sound--

2 A "Ou, ou, ou." So I put my ear up to the door
3 coming out of a sleep, and I tried to tell what the hell
4 it was that went on for so long. Then I heard a bang,
5 bang, bang, bang, bang. Consecutive blows.

6 Q Well, bang, bang, bang, bang, bang can mean
7 many things. Do you have any idea what type of banging
8 that was?

9 A Well, it was against the wall. I couldn't
10 tell, but, I was wondering what the banging was, but it
11 sounded like when you hit a wall, and it echoed.

12 Q What did you do?

13 A I didn't do--I just put my ear up to the door
14 I just like, more or less, froze. I didn't know what was
15 you know, going on. I just put my ear up to the door
16 and tried to listen as much as possible. Then, I was
17 just about ready to go out and, I thought I better not
18 because I didn't know what was out there, you know.

19 Q Can I ask you, how old are you?

20 A Seventy-four, I will be seventy-four in March.

21 Q You heard those noises. You had your ear
22 against the door.

23 A Yes, against the door.

24 Q What happened next?

25 A Well, finally that noise ended. It was a co-

1 minutes later, Albert Farver come up. He is another room
2 there. He come up the steps, he had to turn the lights
3 he said because they were out and he went up to his room
4 and he happened to look back at Lenny's room, the hallway
5 there, and he happened to see Lenny laying there. So he
6 came over and hollered, "Gary you better call the police
7 and the ambulance, Lenny's been hit." So we all came out
8 in the hallway, congregated above the steps, right in the
9 hall that goes back by Lenny's room. Then they called the
10 911 emergency number. Frank Gitori and Gary. Pretty
11 soon the chief came and the ambulance came.

12 Q If in the--

13 A The paramedics came and they asked Lenny, "What
14 day is this Lenny?" They started giving first aid. Lenny
15 said, "Saturday." It was really early Monday morning, you
16 know.

17 Q Let me interrupt you. Is there any way you
18 can estimate how long it was from when you first heard the
19 noises, both the "Ou, ou--

20 A You mean, "Ou, ou--

21 Q Right, to the point where you actually went
22 out into the hall, when you heard the noises stop.

23 A I'd say at least ten minutes. Coming out of
24 a sleep, you know you don't--

25 Q Had you been asleep?

1 A Yes, I was asleep, and it woke me up, and I
2 pretty surprised, you know, "Ou, ou, ou."

3 Q Then the people that you saw when you did
4 come out into the hall would have been just Gary Heimbach
5 and Mr. Farver? Would that have been?

6 A No, it was Gary Heimbach--

7 Q I'm sorry, actual hotel occupants.

8 A Well, Gary Heimbach was over in his room
9 calling, and Frank Gitori went over to help him call the
10 emergency number. Then there is John Torres, John the
11 Puerto Rican, he came out, and then me. Then Bob Farver
12 up the steps and he said he saw that guy, got a glimpse
13 of that guy and he was going back down to see if he could
14 find out which way he went, trace him. He left, he was
15 gone a short while, he came back and said he couldn't find
16 him nowhere. And then--

17 Q Incidentally, are you aware that Lenny named
18 you as the person who had beat him? Are you aware that
19 Lenny named you as the person who had beat him?

20 A Oh, yes. I think he repeated twice while he
21 was laying, after we congregated out there, you know. After
22 we had called the ambulance and the police, I think he said
23 it twice.

24 Q Said what?

25 A "Louie did it, Louie did it." I think he said

1 it twice. So, the other guys--

2 Q Do you know why he would have named you?

3 A We had an argument. It was that Sunday morn-

4 Q You and Lenny had an argument?

5 A Yes, it was just a verbal argument. He liked
6 to argue quite a bit, you know.

7 Q What was the argument about?

8 A A can of Ajax. He went in the bathroom and
9 there wasn't any powder in the Ajax can and he got mad,
10 then I got mad. It was just a little heated argument.
11 happened--so it was over. But I'll tell you that we never
12 had no other arguments.

13 MR. KNECHT: Thank you. Cross examine.

14 MR. COSTOPOULOS: No questions.

15 MR. KNECHT: That's all. Thank you. The
16 Commonwealth would next call Don Hellenthal.

17 DON HELLENTHAL, Called, sworn according to
18 and examined by Mr. Knecht.

19 DIRECT EXAMINATION

20 BY MR. KNECHT:

21 Q Your name for the record?

22 A Donald Hellenthal.

23 Q Mr. Hellenthal, the next question is where
24 do you live?

25 A 1029 Dickson Street in Berwick.

Exhibit "I"

1 A Definitely said "they didn't get my money."
2 Q Did you ask him who had done this?
3 A Yes, I did. I said "Who--were you arguing
4 anyone?" He said "yes, Louie." Louie is a tenant that l
5 up there. He said "George--I had a bad argument with Geo
6 I said "George, who's George? Do I know him?" He said "
7 don't think so. He came to rent a room and I wasn't able
8 rent him a room. After some argument, I promised to take
9 walk down the block." He said "that's why I went back to
10 club, because I didn't want him in my room. It would cau
11 me problems with the landlord."

12 MR. KNECHT: Cross examine.

13 CROSS EXAMINATION

14 BY MR. COSTOPOULOS:

15 Q Mrs. Sorber, you say you have been going wi
16 friend's of Lenny Radziak for how many years?

17 A Sixteen.

18 Q When you were talking to him that morning,
19 he was at least coherent enough to know that they didn't g
20 his money?

21 A Definitely.

22 Q No question in your mind about that?

23 A No question whatsoever.

24 Q And you, of course, caring for him and lovi
25 him, wanted to know who did this?

Exhibit "J"

6G The Times Leader, Wilkes-Barre, PA, Sunday, August 28, 1988

[Os state law]

EDITORIAL PAGE

The Times Leader

DALE DUNCAN President and Publisher

717.329.7225

ALLISON WALZER Editor

CLIFF SCHECHTMAN Managing Editor

BILL GRIFFITH Associate Editor

MARITA LOWMAN City Editor

NEIL SHEEHAN Sunday Editor

Those named above are members of our editorial board. The board also includes editorial writers Ray Blockus and Tom Bigler.

the families — one of which is from Scranton, another from Carbon-

Kosik noted that the Scranton and Carbondale school districts require the

tutor to be a certified teacher in Pennsylvania, while others only require a college education or a high school diploma.

Among the families directly affected by the order are the Jefferys of 1111 Avenue in Scranton. John Jeffery, 44, and his wife, 43, first sent their two children to private Christian schools. But in the last four years, Jeffery said, they have been teaching them at home.

Jeffery, who has a college degree and his wife a high-school diploma in nursing and child-care certification, hailed Wednesday's ruling as "a great time for home schoolers in this country."

But "we haven't hit a home run; we're only on third base," he said, adding that the superintendents could appeal the decision or the legislature

Berwick man faces murder charge

By TRACY JORDAN

Times Leader Staff Writer

BERWICK — Police arrested a Berwick man Thursday in connection with a one-year-old murder.

George Sheeler, 40, was charged with criminal homicide, criminal conspiracy and aggravated assault in connection with the beating death of 51-year-old Leonard Radziak on May 11, 1987.

Radziak was found beaten outside his room at the Hayes Hotel, Lasalle Street. Police said he was beaten with a hammer, which was found in the hallway. Radziak died the next day in the Geisinger Medical Center in Danville.

Sheeler is the second person arrested in connection with the death. Police arrested Kenneth Shiffer, 27, of West Front Street, on Oct. 8, 1987.

When Shiffer was arrested, however, he told

police he acted alone in the murder.

Shiffer is in the Columbia County Jail awaiting his trial. He has been in the prison since his preliminary hearing last November.

Sheeler was arraigned before District Justice Delbert Pennypacker in Millville and committed to the Columbia County Jail, Bloomsburg, without bail.

A magistrate cannot set bail in a homicide arraignment.

A preliminary hearing is set for Sept. 1 at 10:30 a.m. before District Justice Richard Cashman in Berwick.

Sheeler was arrested at home Thursday morning by Berwick Assistant Police Chief Thomas James. He was assisted by the Bloomsburg State Police and Columbia County District Attorney Scott Naus.

Dry season proves hard on migrants

By GARY MURACA

Times Leader Staff Writer

WILKES-BARRE — They come from far off places like Mexico, Guatemala and El Salvador.

They arrive via bus and car, toil in the fields of Northeastern Pennsylvania for several weeks and then leave for greener pastures.

They are the migrant workers and, like the farmers they work



TIMES LEADER/GARY MURACA

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two grandchildren; one great-grandchild.

Funeral services will be Saturday at 1:30 p.m. from the Metcalfe and Shaver Funeral Home, 504 Wyoming Ave., Wyoming with Rev. Robb Henderson, Orange United Methodist Church, officiating.

Interment will be in the Eaton Cemetery, Orange. Friends may call today from 2 to 4 and 7 to 9 p.m. Memorial contributions may be made to the Orange United Methodist Church, P.O. Box 227, R.D. #3, Dallas, 18612.

in Ostrum

Surviving are his wife, the former Cecilia Januszewska; children, Mrs. Robert (Patricia) Zawada and Mrs. Donald (Debra) Harris, both of Wilkes-Barre; Calvin C. Jr., Lampac, Calif.; brother, William F., Shavertown; sister, Betty Ostrum, Wilkes-Barre; four grandchildren.

Funeral services will be Monday at 10:30 a.m. from the Luther Kniffen Funeral Home, 465 S. Main St., Wilkes-Barre with Rev. Donald P. Hartshorne, officiating.

Interment will be in Maple Hill Cemetery, Hanover Township. Friends may call Sunday, from 2 to 4 and 7 to 9 p.m.

Hrvnak

He was a naval veteran of World War II, serving as an aviation machinist mate First Class in the U.S. Navy-Air Force.

Surviving are his wife, the former Josephine Hudak; son, Airman First Class Gregory, Lowery Air Force Base, Colorado; daughter, Mrs. Daria Rowland, Pottstown; brothers, Michael, Veterans Administration Hospital, Lebanon, PA.; Daniel, Mt. Pocono; sisters, Mrs. Mary Bennetski, Lower Askam; Mrs. Celia Rominski, Nanticoke; Mrs. Ann Kadtko, Wilkes-Barre; two grandchildren.

A military funeral will be conducted Monday at 10 a.m. by American Legion Post #350, Nanticoke from the Grontkowski Funeral Home, 51-53 W. Green St., Nanticoke with a Mass of Christian Burial in St. Joseph's Church at 10:30.

Interment will be in the parish cemetery, Nanticoke. Friends may call Sunday, 2 to 4 and 7 to 9 p.m.

yne Neely

A veteran of World War II, Mr. Neely served in the U.S. Army Pacific Theater of Operations. He was also a member of the American Legion Post #558, Plains.

Surviving is his wife, the former Ruth Sprow; several nieces and nephews.

Funeral services will be at the convenience of the family with interment in Oak Lawn Cemetery.

Arrangements by the Frederick

glinning Saturday at 7 p.m. and after 2 p.m. on Sunday.

Interment will be in Cathedral Cemetery, Scranton.

John Schmid

John A. Schmid, 82, of Slocum, died Thursday morning, Sept. 1, 1988 at his home.

Born in Patterson, N.J., he was a son of the late John and Elizabeth Schmid.

He had resided in the Slocum area since 1944, and prior to that in Wilkes-Barre. Before living in Wilkes-Barre, he resided in Patterson, N.J., from 1916 to 1934.

Prior to retiring in 1968, Mr. Schmid was employed as a machine operator by Hazard Wire Rope, Wilkes-Barre. He was a member of St. Mary's of Our Lady Help of Christians Church, Dorrance.

He and his wife, the former Catherine B. Reiner, celebrated their 62nd wedding anniversary in January.

Surviving in addition to his wife are sons, John P., Milwaukee, Wis.; Andrew M., Berwick; Joseph R., Slocum; Robert J., Deptford, N.J.; daughters, Mrs. Robert (Rosemary) Petty, Rockaway, N.J.; Mrs. Edward (Betty) Strzelecki, Wapwallopen; brother, Joseph, Patterson, N.J.; sister, Mrs. Edward (Rose) Mikalonis, Wayne, N.J.; 25 grandchildren; 11 great-grandchildren.

Prayer services will be Monday at 9 a.m. from the Ralph H. Cragle Funeral Home, Hobbs followed by a Mass of Christian Burial at 9:30 in St. Mary's of Our Lady Help of Christians Church. Rev. Robert N. Shilala, pastor, will officiate.

Interment will be in the parish cemetery, Dorrance. Friends may call Sunday, 2 to 4 and 7 to 9 p.m. Rosary will be recited Sunday at 7:30 p.m.

Morris Kemmerer Jr.

Morris Kemmerer, Jr., 81, of Watkins Guest Home, Orange, died Wednesday evening, Aug. 31, 1988 in Mercy Hospital.

A life resident of Mountaintop, he was born in Nuangola, Feb. 10, 1907, a son of the late Morris J. and Jenny McGovern Kemmerer.

He was active in the Civil Air Defense during World War II and was a member of the Wright Township Fire Co.; the township auxiliary police; the Black Diamond CB Club, Wilkes-Barre.

Surviving are nieces and nephews.

Funeral services will be Saturday at 9:30 a.m. from the Graham-McCune Funeral Home, 80 S. Mountain Blvd., Mountaintop with a Mass of Christian Burial at 10 in St. Jude's Church.

Private interment will be in the Calvary Cemetery, Butler Township. Friends may call Saturday from 8:30

ing.

Friends may call today, from 2 to 4 and 7 to 9 p.m.

Berwick man arrested in year old murder case

BERWICK — Police arrested a Berwick man Aug. 25 in connection with a one-year-old murder.

George Sheeler, 40, was charged with criminal homicide, criminal conspiracy and aggravated assault in connection with the beating death of 51-year-old Leonard Radziak on May 11, 1987.

Radziak was found beaten outside his room at the Hayes Hotel, Lasalle Street. Police said he was beaten with a hammer, which was found in the hallway. Radziak died the next day in the Geisinger Medical Center in Danville.

Sheeler is the second person arrested in connection with the death. Police arrested Kenneth Shiffer, 27, of West Front Street, on Oct. 8, 1987.

In arresting Shiffer, police said he acted alone in the Radziak murder. The newspaper incorrectly reported Aug. 26 that Shiffer told police he acted alone in the murder.

Shiffer is in the Columbia County Jail awaiting his trial.

Sheeler was arraigned before District Justice Delbert Pennypacker in Millville and committed to the Columbia County Jail, Bloomsburg, without bail.

A magistrate cannot set bail in a homicide arraignment.

A preliminary hearing set for Thursday was continued upon the request of his attorney, Frank Kepner Jr.

The new date is Sept. 16 at 1 p.m. before District Justice Richard Cashman in Berwick.

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Church to hold ice cream social

The Bloomingdale United Methodist Church will hold an ice cream social at 4 p.m. Saturday, Sept. 10, at the church.

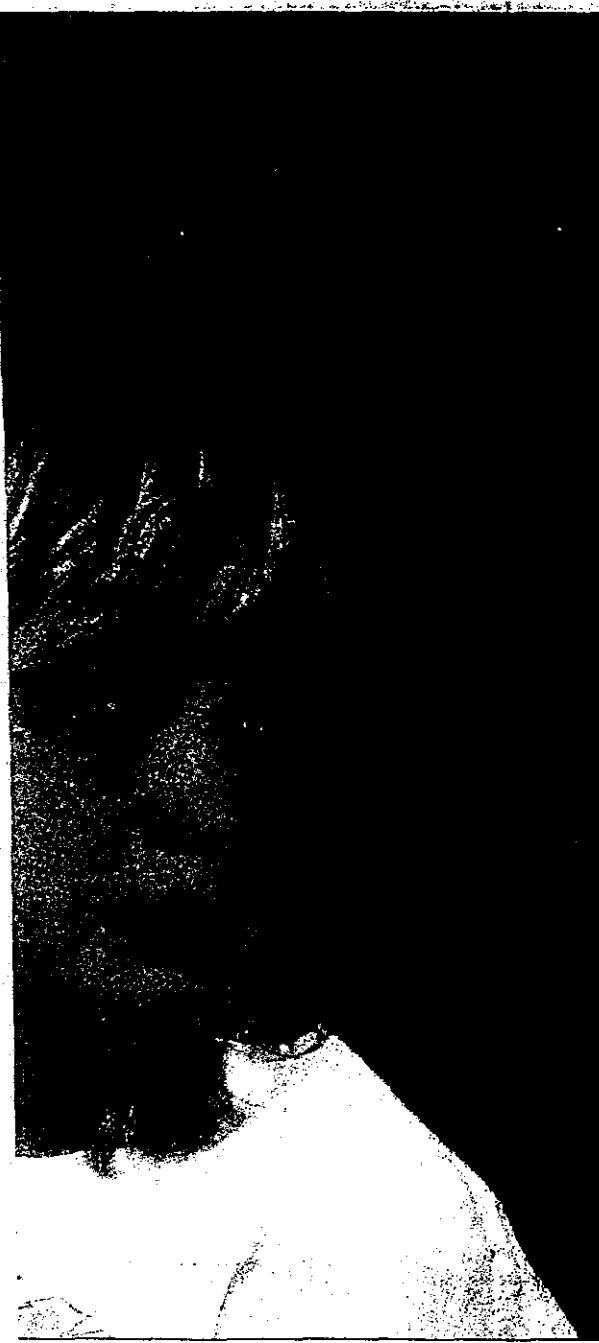
The menu will include barbecue, hot dogs, bean soup, deviled eggs, potato salad, beans, assorted pies and tarts, and ice

October 8, 1988 Weekend Edition/50¢

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Press-Enterprise/Bill Hughes

N. Myers refused to hear their reasons why ed to her father. The Lutskys' flight with the

Murder witness tells story

By LEON BOGDAN
Press-Enterprise staff

BERWICK — An elderly eyewitness has surfaced who can positively identify the killers of Leonard Radziak, a policeman testified Friday.

The revelation came during a preliminary hearing for 40-year-old George Sheeler, one of two suspects in the brutal beating death.

The witness claims he saw Sheeler and the second suspect, Kenneth Shiffer, "pacing" a darkened hallway at the Hayes Hotel in Berwick.

He then listened as Sheeler and Shiffer beat to death the elderly Radziak, a hotel tenant, the policeman said.

The statement was given to authorities only on Wednesday by 68-year-old Juan Garcia, a former hotel resident now confined to a nursing home.

It is the first eyewitness account of the assault, although police admitted Garcia had "nothing" important to tell them 17 months ago when first questioned about the crime.

"As I recall, I wasn't too impressed with his interview at the time because he said he was asleep. Please see MURDER page 14

Frustrated flagwoman stops truck

Press-Enterprise staff

BLOOMSBURG — A state welfare investigation team that was waved off the Beatrice Bird case by District Attorney Scott Naus in December will return next week to begin a review of the county Children and Youth Agency. Commissioner George Gensemer said Thursday.

ARRIVED IN BLOOMSBURG yesterday, the team will spend at least three days reviewing files and interviewing agency workers to unravel its handling of Beatrice Bird, who starved to death under agency supervision in March.

The team, which includes Bloomsburg University Sociology Chairman Sue Jackson, also will identify overall problems at the agency.

early.

But Naus said the team would interfere with his probe and indicated recently that his investigation is drawing to a close.

Department official Pete Rollason informed Gensemer of the team's findings. Please see **BIRD** page 14

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All the elements will be built to turn "School" into a modern "New School." The school board said the county will finance the bond issue, which may be necessary to bring mills 20 years to pay

up an extension
the high school
Space 14



Press-Enterprise/Keith Haupt

CHANGE — Juan Garcia rebuts police story.

'Eyewitness' denies seeing Berwick killing

By FRANK SELLERS/ Press-Enterprise staff

ORANGEVILLE — The prosecution's only eyewitness against murder suspect George Sheeler now says he remembers little about the night a man was fatally beaten outside his hotel room.

Juan Garcia, 65, claimed to have heard a "thumping" noise in the hallway when Leonard Radziak was beaten, according to a police officer's testimony at a preliminary hearing in October.

But when asked this week about the murder, Garcia said, "I said I saw nobody . . . didn't see anything."

A county prosecutor, however, said he'll press the case against Sheeler with or without Garcia's testimony, building a case on circumstantial evidence.

Garcia, a native of Puerto Rico, was a Hayes Hotel tenant on May 11, 1987, when Radziak returned home sometime after midnight. Today, Garcia is confined to a semi-private room at

Please see **KILLING** page 14

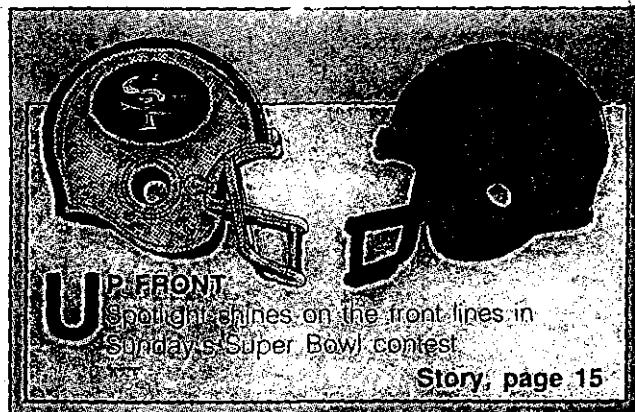
Eight jurors seated in murder case/Page 3

BLING: Columbia won't hold county vote/Page 4

VICTORY: Danville fills empty stores/Page 6

CLINK: Markets needed for newsprint/Page 7

TESTA: Budget boss quacks up senate/Page 8



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name for Casey's appointment as did attorney Frank Wenzel of Bloomsburg.

Keller said he got the word yesterday morning in a telephone call from the governor's office. "I still have to wait for confirmation," he cautioned, but personally felt confident of becoming "a good judge."

"I'd make a good one. You gotta be fair, be decisive," he assessed. When asked if he expected any Senate opposition,

In a obviously elated, " Keller said, adding he hoped to serve on the bench as promptly as possible to help curb a growing local caseload.

The Senate will receive Casey's appointment by Monday, and will have 25 working days to act on it, said Rita Frealing, a Casey spokeswoman.

If confirmed, the appointment goes to the Department of State.

Keller said his private sources already have been informed of his intentions to seek the judgeship. Of his private law offices at Market Square, he said he is "going to wind it down" and pass on work to his associates, Elwood on to Harding Jr. and Michael Trex.

He felt that a judicial campaign would not differ greatly from running for district attorney, saying "it's a lot of hours

Cost
of

design is nearly complete. Jessick said the designs must pass a state board which must OK how it looks. "It can't look like an add-on," or it won't be approved, she said.

Jessick gave the following breakdown for the actual building costs:

High school — new construction, \$1,029,510; alterations \$1,987,613. Total, \$3,430,000. Plus architect's fees and cost of bond issue, \$3,450,000.	Elementary school — new construction, \$865,330; alterations \$728,625. Total, \$1,593,955. Plus architect's fees and cost of bond issue, \$1,830,000.
--	--

The overall cost of the project is \$5,260,000.

Jessick said the state would reimburse the district an estimated \$1,461,866 on the high school portion and \$676,551 on the elementary school. That leaves a total local share of \$3,121,583, she said.

Hoagland asked why the state would cover three-fourths of high school costs, but only half the elementary costs. Jessick said the state reimbursement percentage is lower for new construction than for renovation.

"He may be frightened," Knecht said as to why Garcia is now denying any knowledge of the crime. "Maybe in a week or two, he'll remember and tell somebody what he told us," Knecht said.

Knecht said the district attorney would have to wait until sometime closer to the trial date, if the case isn't thrown out, to determine whether Garcia's testimony will be used.

"I think we'll be able to proceed with him or without him. There are lots of other circumstances," Knecht said.

Killing —

ir-Mund Nursing Home, Engerville. Speaking with a thick Spanish ed. All he remembers the night of murder is the police waking him up in the early morning, he said. They showed him Radziak's body and asked him if he knew anything about what happened, he said. He told them he knew nothing.

Shown a photo of Sheeler during an interview on Wednesday, he said Sheeler looked like someone with whom he worked in Berwick lamp factory, but that was as "a long, long, long time ago."

He could also not identify a photo of Ken Shiffer, who had been convicted of second-degree murder in the death. Prosecutors claim Shiffer and Sheeler acted together.

A state police officer, however, painted a different picture Garcia during a preliminary hearing that resulted in homicide charges being sent to Columb County Court.

State police Tpr. Char

Confer told District Magistrate Richard Cashman what Garcia had told him during an interrogation after the murder.

Confer testified on Garcia's behalf because the witness was too ill to attend the hearing.

Garcia said he saw "two men, one a big man, pacing in the hall late at night . . . one was George, the other Kenny," Confer testified, adding Garcia noticed one fied, adding Garcia noticed one man reach up and unscrew a bulb from a ceiling light.

"Garcia said he then heard a thumping, the thumping noise of the victim being beaten — and his cries of moaning," Confer said. Garcia then saw the men said.

On Wednesday, asked about Confer's remarks, Garcia said he hasn't told police anything about Radziak's murder.

"I don't say nothing," he said.

Defense attorney Frank Kepner Jr. feels Garcia's inconsistency reason enough to ask Columb County Court to dismiss the case. He said Garcia is the only witness and his testimony is unreliable. Kepner said no one at preliminary hearing linked Shriver to the crime. "One witness

said she doesn't recall seeing him there," he said.

But Assistant District Attorney Richard Knecht downplayed the significance of Garcia's testimony.

"Frank Kepner would like pigeonhole it," Knecht said Wednesday.

He said the district attorney's office has presented "strong evidence," albeit all circumstantial, to have the case bound over to a court with or without Garcia's testimony.

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George Burns is 93.
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Johnson is 55. Actress
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Case 1:00-cv-01829-WWC-PT Document 12 Filed 07/12/2001

Killing	Char-Mund Orangeville.	Nursing Home
Speaking with a thick Spanish accent, he insists he heard another man say nothing when Radziak was killed.	All he remembers the night the murder is the police wakened him up in the early morning, said. They showed him Radziak's body and asked him if he knew anything about what happened, he said. He told them he knew nothing.	
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"Garcia said he then heard rhythmic thumping, the thumping noise like the victim being beaten — his cries of moaning," Confer said. Garcia then saw the killer flee.

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"I don't say nothing," he said.

Defense attorney Frank Kee Jr. feels Garcia's inconsistency is reason enough to ask Columbus County Court to dismiss the case.

He said Garcia is the only witness and his testimony is unrelated to the crime. "One witness linked the preliminary hearing to the crime." Kee said.

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November 15, 1988 TUESDAY/35¢

PRESS-ENTERPRISE

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Jurors selected for the first of three Berwick murder trials

By LEON BOGDAN
Press-Enterprise staff

BLOOMSBURG — A sister of a murdered Berwick man fainted in the courtroom Monday as trial opened for one of two suspects charged in the 1987 beating death of Leonard Radziak.

It is the first of three Berwick murders last year to reach trial in Columbia County court, with the accused, 27-year-old Kenneth A. Shiffer of the 500 block of West Front Street, maintaining his innocence.

District Attorney Scott Naus, while seeking a first-degree murder conviction against Shiffer, told the court he would not ask for the death penalty if a conviction is returned.

A life sentence would be the maximum possible punishment if the defendant is found guilty. Testimony is expected to start this afternoon after a full jury is impaneled. Trial, which could

include two extended court sessions into Wednesday and Thursday evenings, is expected to last all week.

On Monday, seven women and two men were selected during a painstaking screening of 42 potential jurors inside the chambers of Judge Jay W. Myers. Another 55 remained in a jury pool to be questioned. All selected jurors are being sequestered under strict supervision at a local hotel until the end of the trial to avoid outside publicity. Shiffer, who has spent 13 months in jail waiting for his day in court, has pleaded not guilty. He is claiming an alibi that he was home with his live-in girlfriend and their infant child on the night of May 11, 1987, when 51-year-old Radziak was found brutally beaten during an apparent robbery attempt outside his Hayes Hotel room on LaSalle Street.

A second suspect, George Sheeler, 40, of Mifflin Park, is on trial in murder.

KENNETH A. SHIFFER
on trial in murder

at
otel

first seen by a night on Saturday or night have been since no one was with the car, he registered at the past week, Frances Wilson, work who reported

that "he (Tyson) dan alias" that the man has moved late of weekend, very record

Attack

"It is one of the most major breakthroughs in history," Kresock said of the drug's effect on heart attack patients.

And for Davis, who was in stable condition Monday night, it is a treatment that may have been introduced just in time at the local hospital.

According to Kresock, the drug had been used experimentally for about three years and had been put into widespread circulation in the spring. At the Bloomsburg Hospital, he said in-service procedures that must be

fulfilled before a new drug is used had been completed by Thursday, two days before Davis' attack.

Kresock, the hospital's only cardiologist and the physician who examined Davis, said she was a prime candidate for TPA because she was treated only hours after first experiencing chest pains. "The drug seems to be most effective within six hours of a heart attack, he added.

Kresock also said the drug works quickly and allowed him to notice improvement on Davis' electrocardiogram

(EKG) within 10 minutes after she was injected.

Another hospital physician, internist Richard Nesbitt, said he examined Davis' EKG on Sunday and found it to be "remarkably better."

But the drug is expensive and costs up to \$2,500 for 100 milligrams, the dosage needed for one patient, Kresock said.

"That's \$8,000 more per ounce than gold," he added. But it seems to be worth the price because it has been 70-80 percent effective in saving heart attack patients, he said. Because the drug dissolves

blood clots, it's not recommended for patients who have had recent surgery, a stroke, bleeding ulcers or who are pregnant, Kresock said.

The human body naturally produces small amounts of TPA, but not in large enough quantities to reverse a heart attack, Kresock said.

TPA is a product of the new recombinant DNA technology, he said. Bacteria are clinically programmed to make this enzyme.

Kresock, 32, studied medicine

at Penn State University

Hershey Medical Center.

throughout the day included Robert Kehl, 42, a bricklayer from Berwick; Charles Creasy, 45, a PennDOT truck driver; Virginia Barnes, 49, a housewife from Berwick R.D.2.

Also, Janice Longenberger, 37, a secretary from Bloomsburg; Mildred Fetterman, 65, a retired bank teller from Catawissa; Thelma Hughes, 38, a Berwick homemaker; Edna Lynn, 63, a retired nurse from Catawissa R.D.3; and Eleanor Fedder, 64, a Bloomsburg housewife.

Another 11 potential jurors were excused by the court for various health or hearing problems, while one elderly man who lives alone was excused because he had no one to tend his coal stove at home, and a woman said she had no way of finding a babysitter for her three young children.

Yet another excused juror, 41-year-old Charles Case of Millville, a manager at Kawnneer Co. Inc. in Bloomsburg, had a unique problem with serving jury duty this week.

His company, he told the judge, had recently been robbed at one of its service centers in Boston and he was on his way there to do an inventory this week.

Berwick

Township, is awaiting a separate trial on homicide charges. He was arrested in the case a month ago.

As Shiffer's jury selection progressed, one of the victim's sisters who sat waiting in the courtroom with other family members suddenly collapsed unconscious.

A Bloomsburg ambulance team was summoned and worked to revive the woman on the floor of the courtroom before a waiting crowd of some 60 potential jurors.

The woman, who was not immediately identified by name, apparently was overcome by a combination of heat and emotions and reportedly did not require further treatment.

It did cause defense attorneys some concern, however, with the defendant's chief counsel, William C. Costopoulos of Lemoyne, asking the courtroom to be cleared of any potential witnesses or family members to avoid possible prejudicial effects on the waiting jury pool.

Costopoulos said he is "absolutely certain" that a fair and impartial jury could be found in Columbia County despite local news coverage of the murder.

Whether the homicide was widely reported in the local media when it occurred and again



Press-Enterprise art/Brenda Martin

John Tyson, suspected of

strangling his ex-fiancee,

Georgie Nevius, in

Neepepoack, left the United

States by car and traveled

halfway across the nation to

Oswego, New York, where he

was caught by police and

accused of the killing.

Georgia's odyssey, according

to police, took him to

Georgetown, Ky., where he

allegedly left his car at a

hotel. He also told police that

he had lost his luggage in

Des Moines, Iowa.

Local police are enroute to

Kansas, where Tyson will be

charged with first-degree

murder.

death

Lawyer at trial: Police arrested the wrong man

By LEON BOGDAN
Press-Enterprise staff

BLOOMSBURG — A defense lawyer charged here Tuesday that police have yet to find the real killer of Leonard Radziak, who was found dead in a room on trial is a victim of "mistaken identity" by a lone key witness.

"We are here, ladies and gentlemen of the jury, because we don't know what happened," asserted chief defense counsel William C. Costopoulos during opening arguments in the Columbia County murder trial.

Eyewitnesses can't link the defendant, 27-year-old Kenneth Shiffer, to the murder scene because he doesn't fit their descriptions then or now, Costopoulos asserted.

Costopoulos told jurors that after hearing all evidence, "You're going to see why the

lawyers — and the police — don't have any idea who killed Lenny Radziak at the Hayes Hotel on May 11, 1987."

Columbia County District Attorney Scott Naus, while acknowledging no one actually saw the fatal attack take place, argued that the defense's claim was certain, she saw Shiffer fleeing the hotel moments later.

A man dressed in a dark jacket trying to cover his face was seen leaving the building's front door, hurrying toward Front Street. Minutes later, Naus said, a second witness saw someone "jogging" by dressed in identical dark clothing as he passed under a streetlight.

"She says it's him," Naus said. "She says it's Ken Shiffer."

Radziak, 51, was described by witnesses Tuesday as a loud-mouthed, intoxicated bar patron who was "flashing" money

Please see TRIAL page 10

GMC head: We're

to save us money," said Woodlawn Mayor Wein.

Such a proposal would cut the county budget by \$1 million, or about one-tenth of the county's annual budget. The county has a variety of ways to do that, such as cutting high-cost items, such as police and fire departments, which usually has an effect on the costs involved, while cutting an undetermined burden on the state, Rep. Ted Stuhm, D-Berwick.

Columbia County could save about \$144,000 in salaries for court employees, and Montour, \$31,000, officials said, and the numbers would go higher if the ruling includes county sheriffs and prothonotaries. "It's good news, no matter how much it is. It's going to come down," he said.

The court delayed enforcement of its ruling until the Legislature can pass a revised appropriation bill.

"Nobody knows where the money's going to come from," he said.

Please see COURT page 10

Need a hug
Friendly Tavern owner Art Zimmerman placed this sign atop his business recently in support of
Benton English teacher Susan Depoe.
Story, page 29

Murder trials could leave taxpayers with hefty bill

tax equals about \$90,000. County officials originally estimated and budgeted \$150,000 to prosecute the four suspects.

Another \$40,000 was set aside to pay for special prosecutors next year because newly elected District Attorney Scott Naus faces potential conflicts of interest. Naus, a former public defender, will be unable to prosecute suspects he formerly defended.

County officials, however, cut the \$150,000 legal fund from the final draft of the budget and are gambling that the suspects won't go to trial, Faux said. "If they go to trial and we are faced with a financial dilemma, there is an even chance we will instruct our solicitor to petition the court to raise the taxing cap," Faux said. A two-mill tax hike would push the county to 25 mills. State law forbids raising taxes beyond that figure, but if a county can show dire need or "unforeseen" expense, the court can grant the right to tax beyond the cap, Faux said.

"These three murder trials are certainly foreseeable, but we can certainly argue that the expenses are unforeseen," he said.

Please see TRIALS page 10

ders in Berwick exercise their rights to a trial by jury, there is an "even chance" that Columbia County — which will adopt a two-mill tax hike on Thursday — will have to petition the court to raise taxes again, according to county Chief Clerk Harry Faux. And if estimates of the costs of those trials are accurate, the additional hike could amount to two more mills. A mill of

tax equals about \$90,000. County officials originally estimated and budgeted \$150,000 to prosecute the four suspects.

Another \$40,000 was set aside to pay for special prosecutors next year because newly elected District Attorney Scott Naus faces potential conflicts of interest. Naus, a former public defender, will be unable to prosecute suspects he formerly defended.

Mrs. L. is trying to better herself. She's working her way through Bloomsburg University in a work-study program that enables her to earn some money and attend classes.

But it's not easy for her, and it's even tougher for her 5-year-old daughter.

The father departed soon after the little girl was born and hasn't been of any help since. But Mrs. L. pays her bills, including her rent and all her utilities.

December, ironically, is their most difficult month. Because the university will close for the holidays,

Mrs. L.'s employment and income this month will be limited.

She's learned how to get by in difficult times and she'll make it through the holidays. But she says her little girl is badly in need of winter boots and a winter coat and there is no money.

Mrs. L. asked nothing for herself, but the social worker who met with her said she also needs a winter coat.

Amount needed: \$100.

The announcement of the tentative hike came less than one month after the election, but the first ominous warnings that taxes might be raised were issued by Whiting. Please see WORKS page 10.

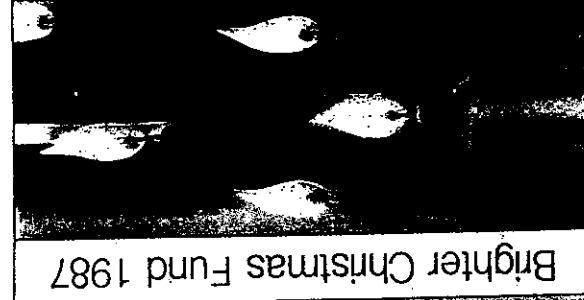
Yorks hopes to block tax increase in county

By MICHAEL J. DILLON
Press-Enterprise staff

BLOOMSBURG — Columbia County Commissioner-elect Wayne Yorks vowed then that nothing could compel him to support a tax increase, saying, "I'm as conservative as the devil."

At that time, incumbents George Genesmer and Lucille Whitmire hedged when asked about taxes. "When a new board comes in we have 30 days to open the budget and look it over again" before a tax increase takes effect, said Yorks, a Republican, when asked for his reaction to the proposed increase.

"You can bet I'm going to be looking. I don't know what can be



Brighter Christmas Fund 1987

Single mother faces holiday income crunch; needs clothing for winter

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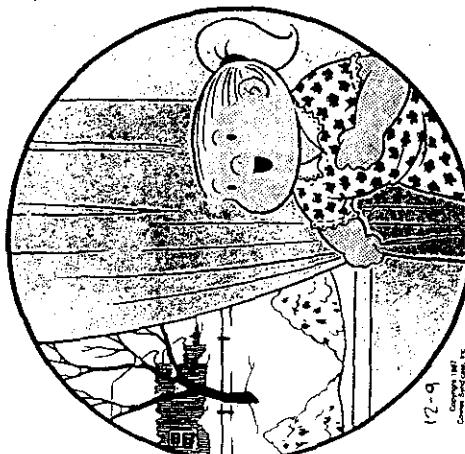
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Mrs. L. asked nothing for herself, but the social worker who met with her said she also needs a winter coat.

Amount needed: \$100.

This story is the first account of a case handled by a single mother in Columbia County. The Columbia County Community Foundation for the Family and others are encouraging donations to the Brighter Christmas Fund. The foundation is a non-profit organization that helps families in the county during the holidays. Donations are tax deductible. Checks should be sent to the Columbia County Community Foundation, P.O. Box 100, Bloomsburg, PA 17815.

FAMILY CIRCUS/ Bill Keane



"God gift-wrapped the world!"

Court

from," Stuhman said, but added, "It's going to be a godsend to county governments."

"Oh my God, imagine what it would amount to," said Columbia County Chief Clerk Harry Faux, who said a tentative county budget for 1988 was balanced recently only with a tax increase and cuts in programs.

Columbia County now pays \$80,117 for court staff alone, plus \$640 for jury commissioners. Salaries for the probation department, another branch of the county judicial system, account for another \$55,500. In Montour County, the court decision could lead to savings of up to \$31,000, based on salaries the county pays a court administrator, bailiff, personnel and sets salaries separately.

clerk of courts and deputy prothonotary.

Savings to both counties could be much higher if the Supreme Court decision is interpreted to include sheriff's deputies who supply courtroom security and elected judicial officials, such as prothonotary and sheriff.

According to Associated Press reports, Supreme Court Justice John Flaherty, writing for the majority, said state funding is required under the state constitution's mandate for a unified court system.

The system, he wrote, cannot be unified if each county hires court

personnel and sets salaries sepa-

rately.

The ruling was made in a lawsuit filed in 1985 by Allegheny County home of all four justices in the Supreme Court majority: Flaherty, Nicholas Papadakos, Rolf Larsen and Stephen Zappala.

"This constitutes tax reform at its very best," said Allegheny County Solicitor James Dodaro. "It's a great victory for Allegheny County and every county in the state."

Writing a dissenting minority opinion, Chief Justice Robert Nix Jr. agreed with Commonwealth Court, which had dismissed the suit, saying the courts had no power to rule on the issue.

The state already pays the salaries of county court judges, district justices and various appeals judges.

The tab this year is estimated at \$130 million. The figure could rise to \$370 million if all county court employees are included, not counting any added expense from uniting the salaries, Sobolevitch estimated.

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Whitmire bore bleak news right after the November election: The county faced a \$450,000 deficit. Taxpayers were warned to gird themselves for a cut in services or a tax hike. They got the tax hike.

The deficit was real and the county has had to trim and sacrifice to balance the budget. Faux said Wednesday, but the \$450,000 figure represented a "Christmas list," he said. Some of that deficit was easy to cut, because all county departments ask the commissioners for everything they need or want, "and of course those things have to be removed first," Faux said.

But after the extras were slashed, a sizable lump of necessary expenses remained, he said. The county was very reluctant to part with the \$150,000 legal fund, he said.

The budget is now balanced, as required by law, and will be adopted Thursday, but a big year for murder trials or some other unexpected calamity could send the commissioners begging in the courts because, Faux said, "we have absolutely no other source of revenue that we could possibly draw upon to help us."

Trials

said in explaining why a 1988 tax hike won't be enough to carry the county through 1989. "Last year we went through a terrible time and raised taxes one more mill, this year it's two mills," he said. "I don't think anyone realizes how expensive it is to run a county."

"We politicians can wring our hands, but the bottom line is that somebody is going to pay the piper — and that somebody is the poor taxpayer," he said.

Next year, he said, the commissioners will probably go to court and ask for additional money beyond the cap. It's something no one likes to do, but it will probably be necessary. "Expenses certainly aren't going to down, that's for sure," Shethamer said.

That man is Kenneth Shaffer, who is accused of murdering Leamy Radzik at the Hayes Hotel on May 11. Shaffer has hired William Costopoulos, a high-powered Philadelphia lawyer who was recently portrayed in a television movie.

The other murder suspects are Myron Lehigh Jr. and Tracey Creasy, who are accused of murdering Tracey's husband, Lee Creasy, on July 16; and Robert Luczak, who is accused of beating James Hartman to death on Aug. 9.

If no trials take place more bad tax news will be waiting for county residents on the horizon. The county will probably find itself in court asking for a tax increase next year because expenses are going to keep rising, and revenue sources are dry, according to outgoing Commissioners Lucy Shethamer.

"You soon eat up a couple of more mills, usually inflation takes care of that," Shethamer said to try to repeal the 1988 tax hike. He has said he

TODAY / Dec. 9, 1987

TODAY IS THE 343rd day of 1987. There are 22 days left in the year.

TODAY'S HIGHLIGHT IN HISTORY:

ON THIS DATE: 1987 - John Milton was born in London, England. The first Christmas seal went on sale for the first time in the Wilmington, Del., post office. The proceeds went to fight tuberculosis.

IN 1884: Author John Galsworthy's first novel, "The Light Brigade," was published in England.

IN 1887: Leonidas Dyer, the first African American to graduate from Harvard University, received his diploma.

IN 1890: The Hall Building roller coaster opened in New York City. It was the first roller coaster ever built in the United States.

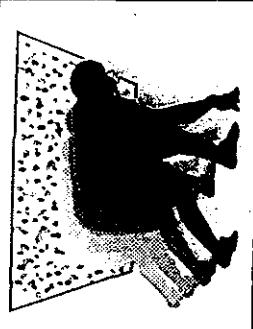
IN 1912: The first crossword puzzle was published in the New York World.

IN 1941: The first color photograph was taken by Edward Weisz, junior and son of chemist Leo Weisz, president of the International Linen Service Co. of New York.

IN 1954: The first color television set was sold in New York City.

IN 1974: The first color television set was sold in New York City.

Dawgs do it again!



Berwick, 28, Mt. Carmel, 7
Danville, 55, Tamaqua, 0
N. Schuylkill, 33, C. Columbia, 6
W. Chester, 24, Bloom U., 9

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Witnesses fail to ID suspect Radziak seen 'flaunting' cash night of killing.

By LEON BOGDAN
and HUGH LESSIG
Press-Enterprise staff

BERWICK — Two witnesses Friday were unable to identify one suspect in the killing of Leonard Radziak, who was found brutally beaten here after being seen "flaunting" a roll of money in a social club. Police believe 40-year-old George Sheeler had called a second suspect, Kenneth Shifler, about robbing Radziak after Sheeler allegedly spent the night drinking with the victim and learned he was carrying \$400 in cash. But at a preliminary hearing yesterday, Sheeler was not identified by either of two patrons of the "Old Man's Club" who pre-

viously told police a man named "George" tried to discourage them from giving Radziak a ride home. "This is a 360-degree turn-around from what I heard three, four days later when their minds were fresh," state police investigator Charles Confer said of their testimony later.

Radziak was found badly beaten outside his room at Hayes Hotel in the early morning of May 11, 1987. He died of his injuries several hours later at Geisinger Medical Center. Sheeler's fingerprints were found on a beer bottle later recovered near the Hayes Hotel, police testified.

"I only caught a quick glimpse of the guy," recalled 23-year-old Raymond Festeier,

he sat directly in front of them in District Justice Richard Cashman's hearing room.

Man's Club" as tall and weighing about 200 pounds and wearing a flannel shirt. Another club patron who socialized with Radziak that night, Joan Beaver, 27, said a man with a "big nose" and blond hair, wearing a polo shirt and jeans, had told her "not to give Lenny a ride home."

Sheeler, who is of average height and slender build, has dark hair combed to the back. Beaver, who said Radziak was "flaunting" a roll of 20s and 50s "around the bar that night," said the man who approached her had blond "bangs" combed to the front.

Neither witness, called to the stand by Columbia County District Attorney Scott Naus, were able to identify Sheeler although he sat directly in front of them in District Justice Richard Cashman's hearing room.

"He said Lenny was drunk," she continued, "and I wouldn't be able to get him out of my car." She said she left the "Old Man's Club" on Please see SUSPECT page 14.



AT HEARING — George Sheeler, left, with Eugene Golla.

Press-Enterprise/Kathy Haug

Womanscholar

During a brief visit to Berwick Hospital Center, Slawek Walesa could have passed f typical, laid-back American s worked.

PressEnterprise.com/Hughes

MURDER SUSPECT — George Sheeler, 40, hides his face

while led from a hearing at which he was charged

Second suspect arrested in 1987 Berwick murder

By LEON BOGDAN
Press-Enterprise staff

Sheifer was charged in the murder last Oct. 9 and is waiting to be tried in Columbia County court. Police said yesterday's arrest of Sheeler does not alter their prosecution of Sheifer in any way.

Sheifer plans an alibi defense, with his lawyers claiming he spent the night of the crime with his girlfriend and their infant child. Police said they had been keeping track of Sheeler's whereabouts until they felt confident of having enough evidence to make an arrest.

"We knew where he was when we needed him," mentioned Sgt. Walter Carlson, a lead investigator in a state police task force assigned to aid Berwick police in this and two other slayings here last summer.

"An arrest was made when we felt there was sufficient evidence to take him into court," Carlson added.

"I don't think he expected any visit," Sgt. Carlson noted of the unexpected warrant arrest yesterday morning. Police said Sheeler offered no resistance.

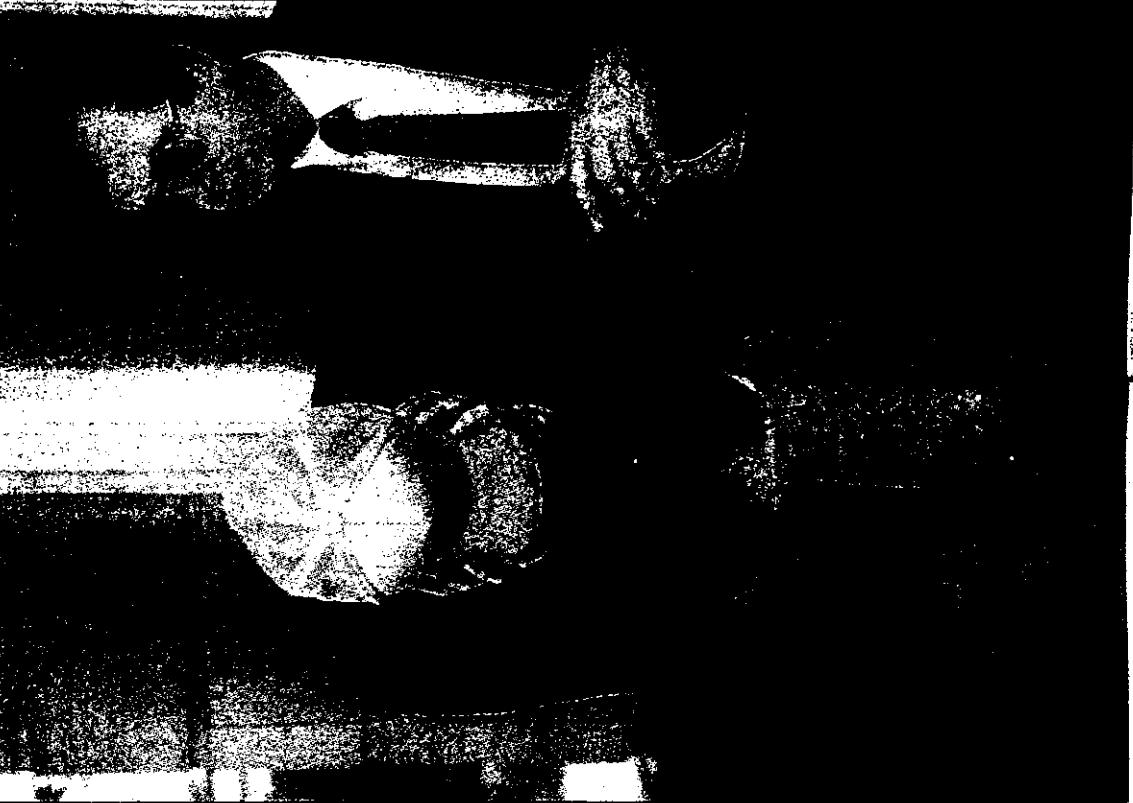
When asked if he personally knew the victim, Sheeler, shielding his face from television cameras on being led away, replied, "Yeah, I knew him."

Asked if he had any comment about the accusations, he answered, "Not at this time, no."

He was taken to Bloomsburg state police barracks for processing and later arraigned on murder, aggravated assault and robbery conspiracy charges before on-duty District Justice Delbert Penny-packer in Millville. Berwick's magistrate, Richard Cashman, who will preside over next week's hearing, is on vacation.

Police believe Sheeler had been drinking "all night" with the victim at a local club here and knew Radziak was carrying \$400 cash when the fatal assault took place outside Radziak's Hayes Hotel apartment on May 11, 1987.

Sheeler, according to arrest papers, telephoned 27-year-old Kenneth Shaffer that night and asked him "if he wanted to rob a guy who he knew who had \$400 on



Visits Young Walesa on U.S. tour, hasn't been told of strike

By HUGH LESSIG
Press-Enterprise staff

BERWICK — The son of Solidarity Union leader Lech Walesa sat in a hospital lobby here last night, oblivious to the strike currently paralyzing his country of Poland.

For the past two months, 21-year-old Slawek Walesa toured the United States. "AmeriCares," a group aids overseas countries. But hasn't been told about the strike in Poland which — as of late Thursday night — was helping to mediate the idea, said AmeriCares representative Jan Wydro, is to come from upsetting the young Walesa during his stay. Before an interview, he requested reporter refrain from any "political" questions about the strike which began two weeks ago. The strategy seems to have worked.

PressEnterprise.com/Hughes

MURDER SUSPECT — George Sheeler, 40, hides his face

while led from a hearing at which he was charged

Bill Keane
August 26, 1988

FROM PAGE ONE

Murder

Assistant county district attorney Richard Knecht, called on to supervise Sheeler's arrest and arraignment, described the suspect as "somewhat of a transient."

"I understand he's made 'no statements at all,'" Knecht said of Sheeler's questioning by police yesterday. Sheeler had moved into an apartment at 435 W. Front St. since last being questioned about the crime in November, police said. His previous address was a post office box in Mifflinville, where Sheeler said his parents still reside.

Shaffer, already in jail on homicide charges, was the first arrested in Radziak's murder although police said at the time that their investigation "was continuing." Sheeler's name was mentioned during Shaffer's preliminary hearing last fall, but police declined to comment on whether further arrests were imminent at the time. Shaffer was to stand trial in Columbia County court next month, but yesterday's developments now

appear to make that court proceeding uncertain. Separate murder trials, however, for each suspect would likely be sought, said assistant D.A. Knecht.

Contacted about Thursday's additional arrest in the Radziak killing, one of Shaffer's lawyers, Charles Rector of Lemoyne, said he still anticipates starting their trial the week of Sept. 19-23.

"We're coming up there to try this thing in September," Rector said. "And everything we know is consistent with that."

Arrest papers pointed to scientific analysis of two Budweiser beer bottles recovered at the Hayes Hotel the night of the crime, along with incriminating statements by several eyewitnesses, as pointing to Sheeler's involvement in the fatal beating.

Latent fingerprints recovered on one of the beer bottles, found sitting on an electric meter at the side of the hotel, matched that of Sheeler. Another bottle was found in a row of hedges behind the hotel.

Police also received information according to arrest papers.

from two patrons at the "Old Mans Club" where the victim was last seen alive that a man named "George," had told them to refuse Radziak a ride home because "they were going to leave together."

Those patrons are identified in arrest documents as Raymond Fernstamaker and Joan Beaver. The man in question was wearing clothing identical to that worn by Sheeler that night — a blue shirt and blue pants.

Sheeler, when questioned by state police, confirmed he had been drinking with Radziak at the club that night but told them he left before the victim had departed.

Berwick assistant police chief Thomas James, one of the first officers arriving to at the hotel to investigate the beating, stated he also saw a person in similar clothing lingering by the corner of LaSalle and Sycamore streets that night, a block from the hotel.

The person walked off "at a fast rate" as the officer approached. He confirmed that Sheeler had "come in to see me a while ago on a related matter" but did not know decided whether to take on the case, although Sheeler had asked to be represented.

He confirmed that Sheeler had

occurred sometime between 1 and 1:30 a.m.

Radziak died about 20 hours later at Geisinger Medical Center.

Sheeler, who was not represented by a lawyer during his arraignment, told District Justice Penny Packer he expected to be defended by Berwick attorney Frank Kepner Jr.

But Kepner, contacted later in the day, said he had not yet decided whether to take on the case, although Sheeler had asked to be represented.

He confirmed that Sheeler had

been beaten "a while ago on a related matter" but did not know

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Benefield

Advertisements for the restaurant used the nickname "The Jolly Fat Man," to describe Benefield.

"Obviously I've gained weight since I came to Bloomsburg and I try to be jolly. I enjoy my work and I enjoy people. I think the only true happiness comes from serving other people," he told the Press-Enterprise when his retirement was announced.

During his years at the Magee Enterprise during the 1970s, the conference center, formerly the Inn

There are 127 days

in women, the right
to vote shall not be denied.
—Julia Grotto

July 26, 1988
127 days

The Coast Guard boat with the camera aboard, the Point Bonita, returned to port in Woods Hole, Mass., at 6 a.m. Friday, Wolf said.

With the underwater camera, officials will be able to determine if the object actually is a vessel, and if so, if it is the Reliance.

The boat's owner received the last call from the crew Tuesday night, but did not notify the Coast Guard until Saturday morning. Between then, there were two heavy snowstorms, Wolf said.

Jones, son of Mr. and Mrs. Wayne Jones, 152 Park Blvd., was married and was a regular fisherman on the boat.

Last Sunday, a fishing boat assisting the Coast Guard in its search for the Reliance caught its nets on an uncharted rock in the ocean floor. After analyzing sonar recordings, officials determined it looked like a vessel on its office.

The spot where the object was found was marked, but the markers were carried away on a strong current, making it more difficult for officials to locate the object, Wolf said. Friday. With latitude and longitude figures, however, the Coast Guard was able to pinpoint itself within 100 yards of it, he said.

Officials were near the object when they got word of the approaching storm, he said.

'Shopper's club' owner waives charges to court

By HUGH LESSIG / Press-Enterprise staff

BLOOMSBURG — A man facing bad check and deceptive business counts as a result of a "shopper's club" he operated by telephone waived a dozen charges to Columbia County Criminal Court Friday.

Joseph Barnhart, 43, Danville R.D. 7, is also expected to appeal five additional bad check convictions on Monday, his public defender, Deanna Peeler-Wenzel, indicated to District Justice Donna Coombe.

Coombe had previously found

Barnhart guilty of passing six bad checks to former employees when he failed to appear at a preliminary hearing.

Barnhart is making arrangements to pay on one of those checks which involved an unrelated personal payment of \$88 to Mary Haas, according to papers filed with the district justice. Hearings were to be held Friday on 11 other bad check charges and one count of deceptive business practices, but all were waived by the defendant.

Paul Wolf. The camera "got excellent pictures of the ocean floor," but not the object, which officials believe may be a vessel on its side in 200 feet of water, he said.

A storm moving up the coast forced the Coast Guard to suspend its efforts to photograph the object, he said. The storm "prevented us from staying out there any longer," he said.

Timothy N. Jones, 24, a former Berwick resident who had moved to Newport, R.I., was a crewman on the Reliance, a fishing boat last heard from Nov. 10. He and four other crewmen are considered missing and not presumed dead, Wolf said.

Lady luck breaks election tie

By KERRY O'ROURKE / Press-Enterprise staff

BLOOMSBURG — Robert W. Pursel proved Friday it doesn't always take a lot of effort or money to win an election. All he had going for him was one vote and a little bit of luck.

Pursel, 24, Ivey Drive, Bloomsburg, and three other candidates were tussled for the position of Hemlock Township assessor after the Nov. 3 election. Each had received one write-in vote.

Friday, the candidates were summoned to the Columbia County Courthouse to break the tie. Only two came — Pursel and Margaret Hunsinger, 228 Drinker St.

After some ceremonious shaking of a small jug filled with plastic "pills" numbered 1 to 16, Chief Clerk Harry Faux instructed Pursel and Hunsinger to draw a pill. The candidate with the lowest numbered pill would win.

Short and simple, Hunsinger didn't even bother to take her coat off.

She drew first, after shaking the jug herself, but concealed the pill in her clasped hand until Pursel drew. She opened her hand to reveal a 6, not a bad draw. But Pursel held a 2.

Faux declared him the winner, but was reminded that pills needed to be drawn for the two candidates who weren't there — Jack Swartz, who had held the job for years, did not seek re-election.

Lupini

said she asked the four candidates to call her if they were not interested in the position, but no one did.

Brochus, 93 Buckthorn Road, Bloomsburg, did not attend because he was working in Williams-

Radziak suspect leaves area

By HUGH LESSIG / Press-Enterprise staff

"Once, or if he is shown to be involved in the Radziak murder," then the public should be alarmed," Confer added.

Confer added that police can do nothing to keep Sheeler from leaving. "We have no control over him. That's his right," he explained.

Sheeler's name surfaced unexpectedly during a Nov. 4 preliminary hearing for Kenneth Shifter, who is the only man charged so far in the beating death of Radziak.

According to testimony, Shifter told police he received a telephone call before Radziak was beaten. That call allegedly came from Sheeler, who asked Shifter's help in robbing a man who had \$400.

"He's not a fugitive, as of yet," he said.

Tire cleanup motion denied

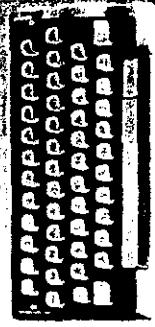
clear, the need for relief must be

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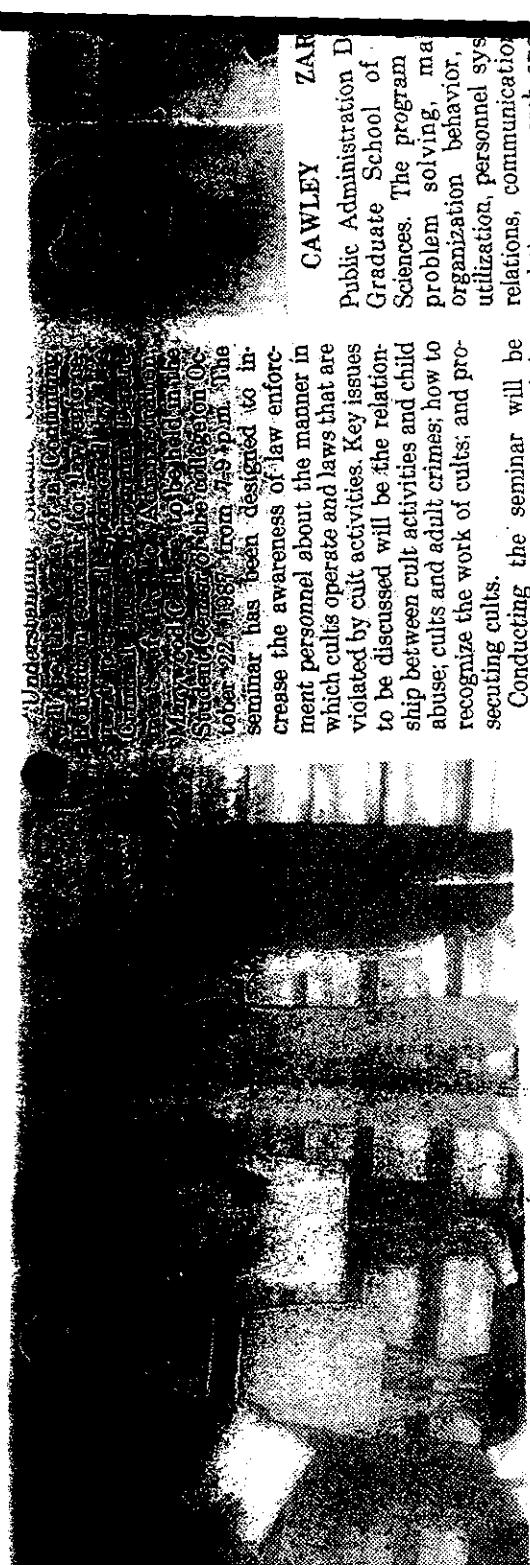


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According to Kingston Police Commissioner John C. Sabol, the course in basic enforcement techniques will be open to all personnel, including police, sheriff's deputies, and other public safety officers. A second training program will be conducted in conjunction with Chief Reese of the Kingston Borough Police Department. We are looking into further in-service training programs and grants." In this regard Sabol noted that the Kingston Township Police Department will sponsor a second in-service training program on October 21, 1987 entitled "Law Enforcement and the Civil Liability Crisis." This training program has also been funded totally by a \$1,500 grant from the Municipal Police Officer's Training Commission. The course is open to area law enforcement personnel. The one day session will be presented by four instructors from the Indiana State University at the Kingston Township Municipal Building.

Officers who participated in the drivers proficiency course included Walter Davis, Gary Beisel, Michael Moravec and Charles Rauschkolb of Kingston Township; Donald Smith, Alan Bogdan, Arnold Berman, Sgt. William Barrett and Benedict Victor of Wilkes-Barre; Donald Hunter, Jay Berthelson, David Shope and Timothy Berkey, Mahoning Township Police in Montour County; James Myee, Williamsport Police; Michael Flanagan, Exeter Borough; Robert Jolley, James Martin and John Flower, Dallas Borough; Keith Keiper, Joseph Quinn and John Yenckach, Municipality of Kingston.

After being arraigned before District Magistrate Richard Cashman, Berwick Shiffer was committed to Columbia County Jail without bail to await preliminary hearing.

Kenneth A. Shiffer, 26, of West Front Street, Berwick, was arrested by state and local police Friday and charged with the beating death of Leonard Radziak, Berwick, last May.

The arrest was made following a probe by the State Police task force assigned to investigate three Berwick area murders in three months. Shiffer, police charge, beat Radziak in a hallway of the Hayes Hotel, LaSalle Street, May 11. The victim passed away the following day in Geisinger Medical Center, Danville, Pa., of the beating.

Notings (Continued from Page 1, Section 3)

GOP primary for that seat, an event, however, which will not occur until 1992. Specter suggests the activist, could have real trouble in such a confrontation. On the other side, the Democrats would doubtless welcome a Specter defeat in a primary election, since

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the criminal justice sys-
tem counterparts in the sec-
ondary and postsecondary
and is directly applicable
to the criminal justice system
and operations".

For further information
on the seminar, call the Continuing Education
at (717) 348-6237.

Conducting the seminar will be
Patrolman Harold P. Cawley, of the
Wilkes-Barre City Police Department;
Chester Zaremba, Criminal In-
vestigation Supervisor at Troop P,
Wyoming Barracks, Pennsylvania
State Police; and Attorney Dan
Pilets, Assistant District Attorney,
Luzerne County. Both Patrolman
Cawley and Mr. Zaremba have had
extensive experience in the investiga-
tion of cases involving satanic cults.
Attorney Pilets is specializing in the
prosecution of cults.

The Criminal Justice Program at
Marywood College offers a Masters
Degree and is a component of the

TOUR CAPITOL — Representative Stanley Jarolin hosted visiting French students and their host families at the capitol building in Harrisburg. Jarolin said the students are part of an international cultural exchange which affords these students an opportunity to view first-hand the American way. Jarolin said he arranged a "V.I.P. Tour" for the students; he presented each with a memoir of their visit from Governor Robert P. Casey. The students, and their hosts, include from left: Fabrice Petit, Audrey Egenski, Celine Gelmann, Jean Kuneiga, Jarolin, Renaud Fatras and Gene Hudak.

Berwick Man Accused Of Murder in May

A 25-year-old Girardville man was lodged in the Schuylkill County Prison early yesterday after allegedly shooting another man who died several hours later at the Geisinger Medical Center, Danville.

Girardville Police apprehended Richard Blackwell at his

Hospital. He was later taken to Geisinger where he died this morning.

Girardville Man Arrested in Shootin

GNA Ban

Zab tests on bloody jacket delay Shiffer murder trial

By LEON BOGDAN
Press-Enterprise staff

BLOOMSBURG — Sophisticated laboratory analysis of a blood-stained jacket owned by murder suspect Kenneth Shiffer of Berwick will prove his innocence, defense attorneys asserted Friday.

Ongoing tests at a private laboratory in New York to identify the exact blood type of the jacket stains by isolating its DNA molecules will delay Shiffer's trial until September, authorities confirmed yesterday.

Jury selection for Shiffer, accused in the fatal beating of 51-year-old Leonard Radziak at the Hayes Hotel on May 11, 1987, was to have begun Tuesday morning in Columbia County court.

It is one of three Berwick murders that occurred last summer now waiting to be tried in the courts. A pool of 225 prospective jurors was called to undergo individual screening to pick a dozen regular jurors and four alternates.

On Friday, however, chief defense counsel William Costopoulos of Lemoyne asked for a trial continuance so defense analysis of the blood samples can be completed. District Attorney Scott Naus did not object.

Analysis of the bloodied jacket, recovered by police from Shiffer's closet shortly after his arrest in the homicide case last fall, is seen as a key piece of defense evidence in seeking an acquittal, his lawyers said.

Please see MURDER page 12



Press-Enterprise/Dave Maiariello
Secretary Boyd Wolff, in front of a corn field at the Danville operation would close.

Honey-losing farm

■ LOST JOBS: Eight state employees, farmers will be out of work/PAGE 17

chief of farm operations. Dunn said that if the state operation did not cease, the farm would drain the program's coffers so much that within a year and a half the General Assembly would either have to allocate extra funds or sell the farms.

"It's hard for me to justify spending money when we're losing almost \$300 a day here," Wolff said. The farm has 229 cattle that will be auctioned off Sept. 15. Some of the farm's confinement will be sent to the Farm Show Complex in Harrisburg; while the rest will be offered to other state agencies, Wolff said.

Please see FARM page 12

Monster truck proves a monster responsibility

By LISA A. CELLINE
Press-Enterprise staff

BLOOMSBURG — Owning one of the world's largest monster trucks is, well, a monster responsibility.

"There's a lot more to it than buying oversize tires. There's an image to be upheld, a business to be run."

"Godzilla," the car crusher, one of the monster trucks appearing this weekend at the KENCO 4 Wheel & Off Road Jamboree Summer Nationals at the Bloomsburg Fairgrounds, sports the slogan "Ocean State Monster," "King of the Monsters" and "Pride of Rhode Island," alongside painted lettering of its own name.

The truck's owner, Charlie "Kid" Rarig, said he had the idea to paint the truck's name on the side because he wanted to make it stand out.



five cars lined in a row. But Godzilla won't be crushing cars in Bloomsburg this weekend.

"We're not running in competitions," said Godzilla driver and owner Alvin L. Thurber III. "(This) jamboree won't pay monster trucks for traveling expenses," he said, adding that the truck will only enter the "Show 'n' Shine" competition, which offers a cash prize.

So why is the truck at the first summer nationals?

Thurber's father, also part owner, said the family's monster business is for sale — everything from the truck's registered name to at least 22 appearances contracted for next year. Showing the truck around while advertising it for sale doesn't hurt, he said.

Please see MONSTER page 3

Press-Enterprise/Bill Hughes
CHARLIE "KID" RARIG
with Mainline Monster

\$2.6 million, ASCS Montour County spokesman Lewis Humphrey said. If weather forecasts predicting a chance of rain Monday or Tuesday turn out to be correct and if rains continue regularly until harvest, the loss might be held to 50 percent, Hubbard said. "But if it doesn't turn around we could be looking at a \$14,285,000 total," he said.

Humphrey said Montour farm profits can be expected to nosedive fast without rain. "Probably in the next week you can add 15 to 20 percent (to the 50 percent loss) if we don't get rain," he said.

988

Murder

"Our argument is there's blood on the thing but not the victim's blood, because our man had nothing to do with it. We're convinced it is not the victim's blood," said defense co-counsel Charles Rector.

"The Commonwealth is going to want to include that jacket and say the blood is of human origin. We're not satisfied with that," Rector said. "All we're saying is they got to do better than that."

Radziak, an unemployed hotel resident who lived alone, was found outside his room brutally beaten about the head. He died a day later at Geisinger Medical Center.

Several eyewitnesses identified Shiffer from police photographs as a man they saw near the hotel that night wearing a dark jacket and carrying what appeared to be a silver pipe.

An alibi defense will be introduced at trial that Shiffer spent the evening with his live-in girlfriend and infant child when Radziak was beaten.

Attorney Rector said that Shiffer, 26, jailed without bail since his arrest last Oct. 9, is

area economy. Hubbard said crop losses are only the tip of the spring which banks that loaned farmers money worry about repayment. Farmers strapped for cash to buy feed can't invest in new equipment. Sometimes they can't even repair the old, he said. "With the size of this drought you're talking about impact that goes all the way to John Deere's national headquarters," Hubbard said.

Area farmers were weeks ahead of the general public in realizing the drought potential. They had cut back water use before the state on

willing to wait for the laboratory results in the hope it will help clear him.

"The consensus among the defense team and also Ken is that if we can just prove it's not the victim's blood, it's well worth two more months of Ken's time behind bars," said Rector.

"Before we even agreed to continue trial we had to consult with Ken," he explained. "After all, that's another two months he's going to be in the can."

The laboratory procedure, by which DNA molecules of a blood sample are isolated in a chemical culture and identified, is a relatively new technology comparable to a type of "scientific fingerprinting" of blood, Rector said.

A New York laboratory firm called Lifecodes, regarded as the leading serologist testing firm in the country, is performing the tests. Blood samples of the victim have also been obtained under court order to match those with that contained on the jacket, Rector said.

Defense attorneys do not expect any preliminary results until Monday, and that information will only show whether the blood stains on the jacket are sufficient for DNA testing at all.

term.

"There's no question about it if it just doesn't rain in the next month there's not going to be a corn crop," he said.

For a farmer like Yule who doesn't raise any of his own feed, it's hard to stay afloat when corn, hay and soybeans prices rise, but he paid the same for the milk.

"Too many aspects are beyond his control, he said. "Three years ago our price was \$13 a 100 pounds of milk, now it's \$10. Yet the price of milk to consumers is as high as it's ever been and continues to elevate," he said.

If tests cannot be completed, Costopoulos will "just go to trial" and "roll with the punches," his associate said.

"What we're trying to do is determine for sure that the blood on the jacket found in Ken's closet is not the victim's," Rector said.

"We're told it's very much as accurate as fingerprints, since the DNA structure is unique to each individual," Rector said. "But we won't know till Monday if they can even do it."

If the blood analysis can be completed and matched for DNA identification, it will take four to six weeks to compile results.

Both sides feel the case will be ready for trial by September, which is the next criminal court term here.

Rector said that even if attempts to analyze the blood stains fail, the defense is prepared to prove that the jacket was bloodied under different circumstances.

He declined to specify for now what those circumstances may have been.

"We're prepared to identify where it came from and whose it is, even if we can't get

Farm

Republican State Sen. Ed Helton with Penn State. Ed Helton said he felt protocol was breached because his office was not notified until an hour before Wolff's announcement that the press conference would take place.

Dunn said the press conference did not interfere with the Commonwealth Council meeting. "The Commonwealth Council comprises me," Dunn said. "I am the Commonwealth Council."

He said he felt protocol was breached because his office was not notified until an hour before Wolff's announcement that the press conference would take place.

taken steps in the past to make it profitable.

Dunn estimated the state will bring in about \$16,800 rent from the 475 acres when it is leased.

He expects the land to rent for

We are 175 days

of Independence
Washington's troops

had his six-
Anne of Cleves,

Braddock was
served a massive
United States'

House was
having
local collared

Princess Eliza-
announced
asked Congress
between the United

States'
House
of his term

The worst train
in Tennessee

'Nosy' neighbor IDs murder defendant

By LEON BOGDAN
Press-Enterprise staff

BLOOMSBURG — A "nosy" neighbor swears she saw murder defendant Kenneth A. Shiffer running with a metal pipe near the Hayes Hotel the night a resident there was bludgeoned, but no physical evidence links him to the crime, according to trial testimony Wednesday.

Shiffer is accused in the brutal beating of 51-year-old Leonard Radziak outside his hotel room shortly after 11 p.m. on May 11, 1987.

Diane Szklarz, a former Monroe Street resident, pointed the finger to Shiffer yesterday as the man she saw running with a metal pipe moments before Radziak's body was discovered by police.

"We were nosy and went to see what was going on," she said of alerting police to her sighting at the hotel later.

But police admit that while fingerprints of a second suspect, 26-year-old George Sheeler of Mifflin Township, were found on a beer bottle found at the hotel, they found no physical evidence to link Shiffer.

"Are we going to hear any testimony in this courtroom that Ken Shiffer's prints were found on any bottle?" asked chief defense counsel William C. Costopoulos of Lemoyne.

"No," answered state police investigator Charles Confer.

"Were found on any instrument or item?" the lawyer asked.

"None," the state trooper replied.

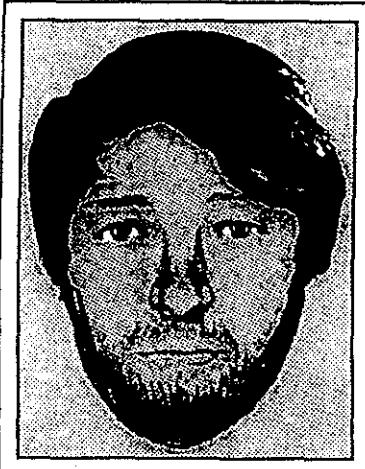
"Is that the Hayes Hotel?"

"I'm not a fact," Costopoulos wailed, "that Ken Shiffer told you if you have a bottle, then you didn't because my prints aren't on there? And do what you have to do."

"Something like that effect," Confer replied.

Confer also testified, however, Please see NEIGHBOR page 18

Detective failed to shave sketch



Berwick police
MURDER SUSPECT
police composite



Press-Enterprise file photo
KENNETH SHIFFER
at previous hearing

By LEON BOGDAN
Press-Enterprise staff

BLOOMSBURG — A sketch widely circulated last summer of a bearded suspect in the Leonard Radziak murder was wrong because "not all of the pieces" were available in a Berwick police kit used to make the drawing, a witness testified Wednesday.

There was no beard on the person it supposedly depicted, 26-year-old Diane Szklarz, who testified yesterday before a grand jury. She told the police she had seen the man she saw running from the Hayes Hotel.

"That was the closest we could get with what we had," she said of the drawing.

Szklarz yesterday pointed to defendant Kenneth A. Shiffer in the courtroom as the person she "positively" spotted

beneath a street light near her former Monroe Street home, located one block from the hotel.

Shiffer, 27, facing a possible life sentence if convicted, is clean-shaven and did not wear a beard when the murder happened in May 1987, according to a photograph produced by his lawyer.

Szklarz said she went to police after reading of the murderer in the newspaper and offered to help complete a composite sketch of the suspect.

But the sketch came out with a distinct beard, a major flaw in the description of the suspect, accompanying the composite sketch while the person she saw "looked like he needed a shave, but had no beard."

But Sgt. Robert McCormick, who worked more than four hours on the sketch, Please see SKETCH page 18

and struck two weeks ago, employees of the state's attorney's office, who were investigating the country, Secretary of Defense Ved an elaborate send-

down on the grounds of "int. Reagan, praised him ser."

Pian-turned-politician edian Peter Cook is 51. Movie director Martin Hutton is 44. Actor pitcher Tom Seaver is

story is worth reading he attitude toward life Confield Fisher, Ameri- 1958).

BS board will meet in the

board will meet at

rs will meet tonight at n the agenda.

will meet at 7 tonight discuss the budget.

gator Confer testified that Shee-

aler, Don Schenck, told his girlfriend, "Don, lie down," and she did. "I'm afraid I'm going to bleed," Costopoulos told a reporter when asked about the murder five months later.

Confer, who questioned Shiffer about clothing seen worn by a suspect spotted by neighborhood resident Diane Szklarz that night, said the defendant told his girl-

friend to "just stick by me and give him the jacket and sneakers."

Blood stains later found on a jacket recovered by police from Shiffer's home could not be positively identified, despite FBI and sophisticated genetic analysis.

But defense attorney Costopoulos claimed outside the courtroom Wednesday that those blood stains resulted from an earlier assault by Shiffer — on a middle-aged man who was beaten up by the defendant a year before the

Jurors hearing the case have not been informed of Shiffer's conviction in that earlier assault, in which George Petrishin was found lying bloodied on a sidewalk near Shiffer's Front Street

home in January 1986. Shiffer had actually been a prime suspect in the Radziak murder and helped link their case to Shiffer.

The defense adamantly denies Shiffer had anything to do with last year's murder, however, saying that while he was invited by Sheeler to "take a man down by Sheeler to "take a man down who had \$400 on him," he refused and stayed home.

Costopoulos admitted it could be damaging to his client, but no clear legal ruling has been made by the court on whether it can even be referred to at this trial by prosecutors because of its prejudicial impact.

Shiffer told police he beat and kicked Petrishin over off-color remarks made to his girlfriend, JoAnn Lutz, in that assault. He was found guilty, but sentencing in that case was postponed when he was charged last fall in the Radziak murder.

Yesterday, state police investiga-

tor Confer testified that Sheeler had actually been a prime suspect in the Radziak murder and helped link their case to Shiffer.

Sheeler, however, was arrested on homicide charges only one month ago.

Through the investigation, it

was learned that Sheeler tele-

phoned Shiffer from the Ameri-

can Ukrainian Club sometime

before the fatal assault. Sheeler

had been drinking with Radziak

and learned he was carrying a

large sum of cash.

Sheeler told other tavern pa-

tron not to give Radziak, who

was intoxicated to the point of

staggering, a ride home when he

asked, Confer said.

"It was unusual for Lenny to

return to the club at night after

drinking in the afternoon,"

Confer said, adding that Sheeler

and Radziak arrived at the club

together about 9 p.m.

One patron, 30-year-old Ernest

Knorr, testified that he and

friends, Tom McGrain and Joan

Beaver, eventually drove Radziak

home and helped him to the door

of the hotel that night.

"He was pretty well drunk,

staggering a little, you know?"

Knorr told the court. He admitted being one of the last known

people to see Radziak alive,

although he denied helping the

victim inside or seeing anything

unusual.

They left Radziak near a door

leading to rooms upstairs. He

said, "We asked him if he was

going to be OK," and he said,

"Yeah, I'll be OK." And we left,

Knorr testified.

Another witness, Ray Fenster

maker, 23, said he was at the ba-

rdroom and saw Radziak "flashing" four

\$100 bills, telling him, "I hav-

more money than you do," where-

he offered to buy him a drink.

Berwick assistant police chief

Thomas James, who was the first

to find Radziak lying in the hot-

hallway after being alerted to an

assault there, said he briefly fol-

lowed a man fitting Sheeler's

description who hurried down a

darkened LaSalle Street before

ducking around a building.

Testimony resumes in Colum-

bia County Court this morning.

the drain," moments after he was placed under arrest for murder five months later.

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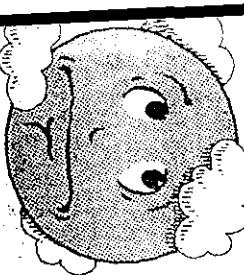
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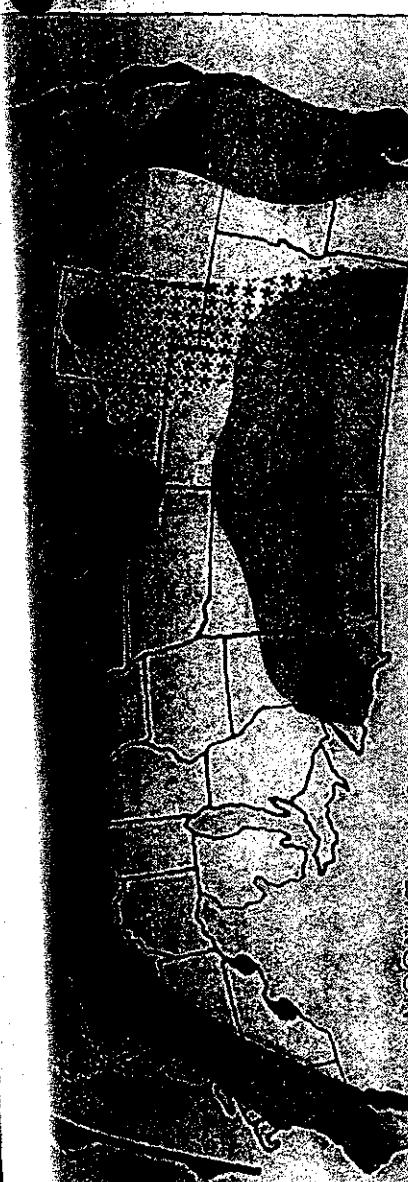
bia County Court this morning.



CASE: Breezy, mild
TEMPERATURE: 55°
ICE: 0% PROB: 20%

DAY
EXTENDED

NATIONAL FORECAST FOR THIS AFTERNOON



An arrested in beating death

By HUGH LESSIG
Press-Enterprise staff

BERWICK — A borough man arrested Friday and charged with the murder of old Leonard Radziak, who was found at the Hayes Hotel on May 11 and died on Saturday, Kenneth Alan Shifter, 26, of 549 Front St., was arraigned Friday on a single count of criminal homicide and committed to Columbia County Prison without bail.

Police Chief Eugene Golla said officers know "a little" about Shifter's motive, but said they didn't want to discuss it further. He did not rule out the possibility of another arrest.

Shifter was picked from a 15-photo lineup by a woman who saw someone leaving the murder scene, according to an arrest warrant affidavit filed with District Justice Richard Chapman.

The woman's name, as well as the name of a man who supplied information to police, were deleted from copies of the affidavit given to reporters.

Charges end in third Berwick murder

The woman said she had left her dog outside between 1:15 a.m. on May 11. When the dog began barking, she went to the front door.

She said she saw a man jogging across the street carrying a pipe in his right hand, the affidavit states. The dog began to follow the man, and the woman called after the dog. When she called, the man stopped under a street light and turned to face the woman, then turned and jogged through a neighbor's yard toward Tuzzi's Bakery.

Another area resident told police he had seen someone walking out the front door of the Hayes Hotel between 1:15 and 1:30 a.m. As the man approached, "it appeared that he was trying to hide [a] pipe alongside his leg, and was trying to hide his face," the affidavit states.

As the man passed, he said, "How are you doing?" and continued to walk up Lasalle Street toward Front Street.

The resident continued walking into the hotel,

and noticed there was no light in the upstairs hallway.



Press-Enterprise/Kelli Haun

AWAY — Kenneth Shifter is taken from his arraignment because they had no beard from investigation.

He heard someone moaning, turned the corner and saw Radziak lying in a pool of blood, the affidavit states. The resident later identified the man as about six feet tall, 180 pounds, solid build and medium-length hair.

Police later issued a composite description of a suspect. The sketch looks similar to Shifter, except that the sketch depicts a man with a beard while Shifter was clean-shaven on Friday. Shifter appeared at the arraignment in a pale blue T-shirt and blue jeans. He reportedly was arrested at Datacom, where he worked.

When Cashman asked if he wished to contact relatives about his arrest, he said "yes, I do," and was taken into another room.

The arrest climaxed a busy day for state and local police, who earlier sat through a preliminary hearing for Robert J. Luczak, who is charged in the beating/slashing death of James Hartman.

An arrest warrant for Shifter was issued around the time of the 11 a.m. hearing, and police announced the arrest shortly after 2 p.m.

arrest gives him a feeling of relief, but "I would still like to see my brother."

He said he was not in contact with police, but his sister told him an arrest would come soon. "When you don't hear things you are up in the air. You are wondering if everyone is doing their job. But we are good Christians, and we believe the truth will always come out," Paul Radziak said.

Leonard Radziak's girlfriend, Marge Sorber, said she had not received any information from police during the investigation, but knew they were working on the murder.

Please see FAMILY page 7

Victim's family relieved an arrest made

By MIKE FEELEY
Press-Enterprise staff

"We thought maybe it was going to go unsolved," said 72-year-old Edward Radziak of Gleneden. "Then the family thought of taking up a reward among ourselves."

He said his sister, Mary Rudawski, was contacted by the homicide task force in Berwick and was told to "let it [the idea of a reward] go."

Rudawski could not be reached last night.

Kenneth Shifter, 26, over the May 11 beating death at the Hayes Hotel on Lasalle Street,

Edward Radziak, Leonard's brother, said the family did not know what to think about the investigation because they had no beard from

A man says attack was declaration

Suspect's confession recounted

BERWICK MURDER: Arrest made in third homicide

Residents glad arrests made

By MIKE FEELY
Press-Enterprise staff

BERWICK — After living through three murders in three months, borough residents interviewed Friday said they were glad arrests have been made.

"I was never too worried about a murderer, because I thought the murders were directed at specific people," said Mary Lawton, Berwick.

Lawton said she was not afraid someone was walking the streets waiting to kill. She also was not concerned about letting her children walk the streets.

She pointed out, however, that

people arrested in the cases are innocent until found guilty, and may not be the actual killers. Three people were murdered in the borough. Leonard Radzik was attacked May 11 at the Hayes Hotel, and died the next day. Lee Creasy was shot in the back while entering his home, July 16 and on Aug. 9 James Harman was found murdered behind a shed in his backyard.

A homicide task force, made up of Berwick and state police have made arrests in all cases. Merton Leighay surrendered to police on Sept. 12 and Tracey Creasy was arrested on Sept. 15 in

Suspects held in all 3 cases

connection with the Lee Creasy murder.

Robert Luczak was arrested Sept. 15 and charged with the Harman murder and yesterday police arrested Kenneth Alan Shiffter for the murder of Radzik.

"I believe the police did a reasonably good job in solving the murders," said Linda Mazzitti, Berwick, who said the killings were "scary" when they were happening, because they were in her town.

Chris Mazzitti said he was glad Berwick police could work with state police to solve the murders. He said it shows the two groups can work together in the future.

Jim Lawton said he keeps a shotgun next to his bed and is not worried about people entering his house.

"It is nice to know the police are keeping law and order in the town," he said.

As mayor, Lou Biacchi said as he is more than pleased with the performance of the task force. As a resident, he said it is a relief there have been arrests.

"There hasn't been too much said about the task force. I had a lot of confidence with our police force prior to the task force but it gave us the extra manpower and expertise," Biacchi said.

"I am just elated. I am grateful to all the people on the task force."

Family

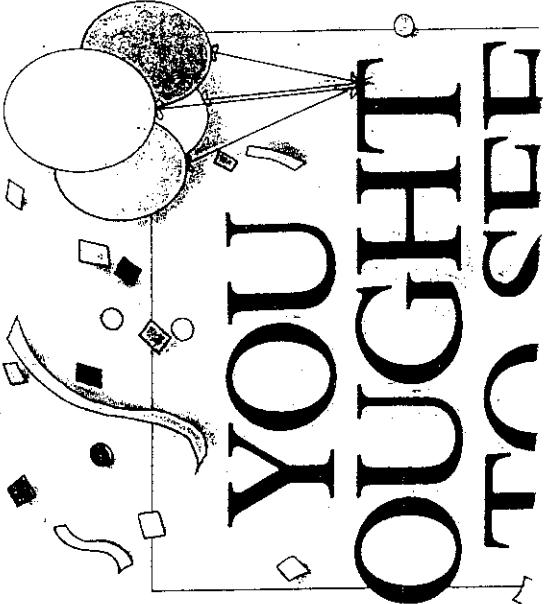
Continued from page 1

"Because of the articles in the newspaper, I was sure they hadn't let it rest," Sorber said. Sorber, of the Harveys Lake area, said police did not contact her after Shiffter's arrest.

"This has been such an awful summer," she said. "It is a relief they arrested somebody, if it is the one who did it."

Paul Radzik's wife, Dorothy, said it is a relief knowing an arrest has been made, but said the grief is not over.

Shiffter, 548 W. Front St., Berwick, was arrested Friday at 2 p.m. He was arraigned before District Justice Richard Casman in Berwick on a single count of criminal homicide. He was committed to Columbia County



Prison without bail. Shiffter was picked from a 15-photo lineup by a woman who saw someone leaving the murder scene, according to an arrest warrant affidavit filed with Casman. He was reportedly arrested at Dauphin, where he worked. Shiffter will have a preliminary hearing on Oct. 19.

Edward Radzik,

"I will think it over and make some kind of approach. I would like to talk to him."

He said there are a lot of things

he would like to say to Shiffter but

probably would ask, "why on earth

did you do that to my brother?"

Serving the heart of the Susquehanna Valley

murder suspect named in court

By HUGH LESSIG
Press-Enterprise staff

etendant portrayed in recent TV series



Enterprise? Bill Hughes

Ken Shiffer's lawyer William Costopoulos was portrayed in CBS' mini-series this week.

\$400 in his wallet. Cokler said an undetermined amount of cash could have been taken from Radziak's pants pocket.

BEFFWICK — The name of a second murder suspect surfaced Wednesday during a preliminary hearing for the accused killer, Leonard Radziak.

In a surprising twist, a state trooper testified under cross-examination that he had \$400 and the victim had \$80. Costopoulos commented after the hearing.

Tor. Conner said afterwards that Sheeler is only a suspect. Sheeler denied he telephoned Shif-

By the Press-Enterprise staff

BERWICK — Attorney William Jostopoulos was in the borough Wednesday, but earlier this week his work was being portrayed in a CBS mini-series, "Echoes in the Darkness," a mini-series based on the murder of Upper Merion High School English teacher Susan Reinert and her two children, featured in the book by Costcor Chuck Shattana in the part of Lemoyne, the lawyer, whose defense of one of the suspects convicted of the murder in the Reinert case. The program aired on CBS.

Costopoulos is now the attorney for Kenneth Shiffer, accused of the May 11 beating of Leonard Bartiar in Bernick Barabik's Sunday and Monday nights.

Costopoulos is the defense attorney for Jay C. Smith, former principal of Upper Merion High School.

The mini-series was taken from a novel by Joseph Wambaugh, the author of "The Blue Knight" and

\$400 in his wallet. Confer saw an undetermined amount of cash could have been taken from Rautak's pants pocket.

"It's ironic the caller indicated the target had \$400 and the victim had \$400," Costopoulos commented after the hearing.

Tpr. Confer said afterwards that Sheeler is only a suspect. "Sheeler denied he telephoned Shif-

er prior to the murder. The name surfaced as Costopoulos began asking questions about photographs shown to a Ranizak neighbor, Dianne Szklarz. The woman, who testified she saw Shaffer on the night of the beating, was shown several photographs throughout the course of the investigation.

Police said on July 13 she selected Shifter's photograph from a group. They had not included Shifter's photo in previous groupings.

Asked what triggered the inclusion of Shifter's photo, Confer said police were trying to find someone who had been associated "with another man." When Costopoulos was asked who the man was, Confer replied, "George Sheeler." As Costopoulos pressed further,

District Attorney Harding objected to the line of questioning. Cashman sustained his objection.

However, Confer later testified that police have evidence linking Deeter to the murder scene. They discovered a bear bottle with Sheehey's fingerprints outside the Hayes hotel, Confer testified.

Confer agreed. Shifler told police to finger-dust the beer bottle for fingerprints, saying "according to Costobolics, 'Look, why don't you dust it? Prints? I didn't do it and I wasn't there.'"

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love made to kill 3 percent pay

Press Enterprise/BIN HUGHES

Press Enterprise/BIN HUGHES

PAGE ONE

Witnesses saw man near Hayes Hotel after murder

By HUGH LESSIG
Press-Enterprise staff

BERWICK — A woman testified Wednesday she saw Kenneth Shaffer near the Hayes Hotel on the night Leonard Radziak was fatally beaten, holding what appeared to be a silver pipe.

Radziak was found minutes later, kneeling in a second floor hallway of the hotel, his head brutally beaten. The 51-year-old died one day later at Geisinger Medical Center. Shaffer, his accused killer, was ordered to stand trial in Columbia County Court after Wednesday's preliminary hearing.

Dianne Szklarz, 514 Monroe St., testified she was brewing coffee at about 1 a.m. on May 11 when she heard her dog barking outside. When she opened the door, the dog ran after a man who was walking across the street. Szklarz said she yelled for the dog, and the man turned around to face her. He was standing "almost directly under the streetlight," she said.

When asked by District Attorney Elwood Harding if she recognized the man, she pointed to Shaffer sitting in the courtroom and said, "The gentleman with the blue plaid shirt."

Questioned closely by defense attorney William Costopoulos, she said Shaffer's face was visible for between five and seven seconds.

He stopped and turned and then said nothing more, she said. In addition, he turned and logged out of the computer system.

HIGHWAY — On the night of the killing, Shaffer was driving his car westbound on Interstate 80 in the 100 block of South Main Street, according to a witness.

Another witness, Robert Farver, testified he was walking toward the Hayes Hotel shortly after 1 a.m. when he saw a man wearing dark clothing. The man passed Farver on the sidewalk, but Farver said he couldn't identify him.

"I couldn't get a look at his face," he said. "He appeared to be trying to hide it, be seen from the side, more or less."

He added, "In his right hand, he had a long, brown object" about three feet long.

Farver then entered the hotel, and discovered a hallway light was not working. He reached up, and found the light bulb was loose. He discovered Radziak in the second floor hallway.

"I went up the steps and I heard moaning and talking, and I looked around the corner and I saw Lenny on his hands and knees," Farver said.

He told another hotel resident to call for help. Farver said he noticed the walls were "blood-spattered and marked up like someone was beating on the wall."

Pathologist Dr. Isidore Mihalko testified the wounds on Radziak's body could be consistent with a hammer or a baseball bat or a pipe.

On May 12, 1987,

Murder



COMFORTED — Karen Fenstermacher left, comforts Joann Lutz, Ken Shaffer's girlfriend, as they leave the courtroom Wednesday. The two women ate dinner together after the hearing.

COMFORTED — Karen Fenstermacher, left, comforts JoAnn Lutz, Ken Shifter's girlfriend, as the two leave his murder hearing Wednesday. The two women are former foster sisters.

Pathologist Dr. Isidore Mihalkis testified the wounds on Radzak's scalp could be consistent with a hammer, but he did not rule out the possibility of a pipe.

Questioned closely by defense attorney William Costopoulos, she said Shifler's face was visible for between five and seven seconds. "He stopped and turned and stood here, and off he went," she said. Then he turned and jogged away, between two houses.

Minutes later, an ambulance

Guy Fawkes was fined \$100 for his petition for Ulysses S. N.Y. received the airplane flight in Pasadena, Calif., on Sept. 17 in a 70-isop along the President defeating it and incumbent GOP ticket, won an unexpected Republican

Composite sketch scrutinized

BERWICK — A composite sketch released after the Leonard Radzik murder showed a man with a beard, but the woman who provided information for the sketch testified Wednesday the man she saw did not have a beard.

Dianne Szklarz testified she saw a man in the area of the Hayes Hotel on the night Radziak was beaten. At one point, the man stopped under a streetlight and turned toward her. She asked to identify the man, she pointed to Shiffer.

Shortly after the murder, Szklarz gave police a description of the man. The sketch released to the public depicted a man with a full beard, but Szklarz said the man had

only a stubble of beard, perhaps three or four days' growth. A police composite sketch is

Centralia — house will run to "party wall" about equal to the average amount spent to buy new homes for those who fled the 25-year-old mine fire that officials say threatens the town, according to Columbia

Centralia

"It will probably cost as much as moving them somewhere else, and that's the way the money should have been spent — to move them somewhere else," Klink said Wednesday.

You can't get the money as actually
needed to result in the best possible
return. Consequently, it's better
to have a diversified portfolio.

Murder

ing Sheeler prior to getting any information from Shifter.

Shinner, dressed in a blue plaid shirt and blue jeans, sat quietly throughout the hearing. Asked for comment afterwards, he pointed to Costopoulos and said "He's my lawyer." Radzialski twice mentioned the name of "Louie The Kraut" before he died, according to testimony from Berwick Assistant Police Chief Thomas James. The first mention came when

During the hearing, the names of two other former suspects also surfaced but police said they are no longer being considered in the case.

A man named Allen Shaw and another known only as "Louie The Kraut" were mentioned during testimony all he would say. "I quite Radzak was on his hands and knees in the hallway of the Hayes Hotel. When James asked who beat him, Radzak replied "Louie The Kraut." He repeated the name when he was at the hospital.

"I'm inclined to believe it," he said. "That's all I'll say." The Kraut," James said. However, James said they ruled out this individual as a suspect. He turned out to be a resident of the hotel who was about 80 years old.

After questioning by Costopoulos, James admitted police did not obtain a search warrant.

braces on the exterior of buildings — were considered to shore up the skinny homes. Despite the lower over the worth of the project. Redevelopment officials had argued it was "ridiculous" to spend

The cost, however, they were rejected as too ugly.

"The cost of the reconstruction project adds up to about 3 percent of the total \$42 million of tax money allotted for the relocation project," Klink said he fears that eventually the expensively reconstructed houses will be torn down and the people moved anyway.

Those who wish to stay argued that because the relocation effort is voluntary, the government had a legal and moral obligation to leave their homes in good, inhabitable condition.

The state Department of Community Affairs has undertaken the administration of the reconstruction of the 25 Party wall homes situated in various parts of the city, and it is anticipated that they will be finished before the end of the year.

By LARRY GERB
Press-Enterprise staff

BLOOMSBURG
Champion Valley
expected to triple
company official's
Work on the thr-
to 30 percent com
the staff from th

Bugging out

Patrick Chilcott, a Bloomsburg University graduate student, spent Wednesday afternoon collecting bugs for his entomology class in a field behind the university.

Murder suspect claims alibi

By LEON BOGDAN
Press-Enterprise staff

BLOOMSBURG — Trial in the first of three 1987 Berwick murders will begin July 12 with an alibi defense for Kenneth A. Shiffer that claims he spent the evening of the crime with his live-in girlfriend and infant child, his defense lawyer said Wednesday.

"I feel the jury will come in with the appropriate verdict," said

criminal defender William Costopoulos of Lemoyne. "He's maintaining his innocence on that."

In surprise legal moves yesterday, Costopoulos also withdrew prior requests that the trial be moved out of Columbia County and that Shiffer be allowed to make bail until a trial date.

Shiffer, 26, is accused of homicide in the fatal beating of 51-year-old Leonard Radziak, who was found lying bloodied in a hallway near his room at Hayes Hotel on

May 11, 1987.

Explaining afterward that he felt news coverage of the crime was "accurate" and would not prejudice a trial, Costopoulos told the court, "We're satisfied the members of this community can fairly try this case."

"I've been in this business for 15 years," said the defender later, who has published a book on criminal defense work. "I've come to rely on my instincts. Sometimes

Please see MURDER page 16

KENETH A. SHIFFER
of Bloomsburg



Press-Enterprise photo
by Dave Maietta

Shiffer was with live-in girlfriend and infant son during killing, lawyer says



KENETH A. SHIFFER
of Bloomsburg

Showers Was primary's big spender

By TOM SINK
Press-Enterprise staff

LEWISBURG — State Rep. John Showers outspent his opponent by \$2,000 to win the Democratic nomination for a state Senate seat in the April 25 primary, according to expense reports filed in the Union County Courthouse.

Showers' campaign committee spent \$8,016.80 from his campaign fund, while his opponent, Sean Shadham, spent \$6,014.88 on his cam-

aign. Showers' strong financial backing was not a factor in his success for his primary victory.

"I think it would have materially affected the outcome of the election if Showers had not been supported by the PEG," says Mike Clegg, president of the Pennsylvania Association of Manufactured Political Action Committees. "Had Showers not financially endorsed the candidates running unopposed, he would have been beaten in July, who knows?"

Clegg, a Democrat, says Showers' campaign committee in Hayesburg, which also endorsed incumbent Republican Sen. Charles R. Gerow, PEG president, said his group also endorsed Showers. "I think it would have materially affected the outcome of the election if Showers had not been supported by the PEG," says Mike Clegg, president of the Pennsylvania Association of Manufactured Political Action Committees. "Had Showers not financially endorsed the candidates running unopposed, he would have been beaten in July, who knows?"

Nancy Reagan and Raisa Gorbachev engaged in a feisty competition for the press attention. Mrs. Reagan was going in at one point while Mrs. Gorbachev was talking. Said the first lady, "I want to say something; I want to say something, OK?" Mrs. Gorbachev fell silent.

Mrs. Reagan characterized their relationship as "a Mexican stand-off" — a tie. A satisfied Gorbachev held a 110-minute news conference — his first ever on Soviet soil — and called the foundations of the Cold War."

For his part, Reagan said again that his characterization of the Soviet Union as "the evil empire" no longer applies.

The Reagans and Gorbachevs got

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Refuseniks Claim visas near

After the pet food has been canned, the cans will go to the hydrostat where a heat process will kill bacteria, he said.

Senators, including Nancy Reagan, have freed several refuseniks among several who have been waiting 11 years to get an exit visa.

Gorbachev, at his own news conference, said the two leaders, in effect — a tie.

A satisfied Gorbachev held a 110-minute news conference — his first ever on Soviet soil — and called the foundations of the Cold War."

In fact, Reagan said, "I'm going to do everything I can to persuade my successor to follow up and continue" the policy of reconciliation.

The defense, arguing that such photographic identification was "unreliable" and unduly suggestive, is seeking to withhold that evidence at trial.

Shiffer's photograph, a classic police "mug shot," or line-up picture, had been shown to the witnesses with past criminal arrests for assault typed below in large print, the defense said.

Shiffer was to be sentenced yesterday for aggravated assault in a January 1986 beating of a middle-aged Berwick area man, George Petrichian. At the request of lawyers, that sentencing, unrelated to the murder charges, will not take place until after his murder trial.

One of the witnesses called to testify about her identification of Shiffer's picture, Patricia Gordner of Berwick, conceded he looked "like" the man wearing a lowered baseball cap and flannel shirt seen near the rear of the hotel, but couldn't be positive.

Another, Dianne Szklarz, who has since moved from Berwick to New Jersey, said she was "positive" she saw Shiffer running away from the Hayes Hotel shortly before Radziak was found.

Radziak, who lived alone, died of his injuries a day later. Shiffer, who had lived in the neighborhood for a time, was arrested five months later.

MOSSOW (AP) — Soviet Jewish leaders said Wednesday 28 refusenik cases had been resolved in meetings between U.S. and Soviet officials, but a Western diplomatic source said later no cases had been settled.

The source, speaking on condition of anonymity, said the Jewish lead-

ers had misunderstood the situation and that the 28 cases had not been cleared for emigration.

The confusion arose over a meeting between Assistant Secretary of State Richard Schifter and a group of six refuseniks Wednesday morning.

A third witness, Beverly Lynn, said she identified Shiffer as a man she saw about two weeks before the murder drinking at a local social club. She said Shiffer was in the company of a second man she knew as George Sheeter, whom police had identified previously as a possible suspect.

Costopoulos inferred her testimony had nothing to do with the crime itself.

The defense also sought access to a jacket confiscated by police from Shiffer's home on which chemical analysis turned up traces of human blood.

Costopoulos told the court the defense needed to have the jacket analyzed by its own chemical expert to prove the blood could not be positively identified as that of Radziak's blood type.

Columbia County District Attorney Scott Naus did not object, as long as the jacket remained in police custody while the test was conducted.

November 1

PRESS-ENTERPRISE

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Serving the heart of the Susquehanna Valley

Jury split on Shiffer verdict

Deliberations resume this morning in murder case

BERWICK on May 11, 1987.

Jurors were led back into Columbia County court at 10:55 p.m. by jury foreman William Hine Jr., with the 36-year-old postal clerk confirming to Judge Jay W. Myers that no verdict was near.

Myers then dismissed all 12 for a night's rest, telling them to resume their deliberations this morning.

"We're very nervous," conceded chief defense counsel William C. Costopoulos, who earlier felt so confident of acquittal that

he decided not to allow Shiffer to testify on his own behalf. "This is the hour of decision, and each minute that goes by is agony for Ken," Costopoulos said. "When that telephone rings with a verdict, that means his free-fication near the hotel that night, with one resident saying 'The jury is doing its work,' she saw Shiffer, but noted he appeared to 'need a shave,'"

District Attorney Scott Naus said, "I don't think anyone can say at this point what the outcome may be."

Testimony wrapped up yesterday with the last of 16 a friend's wedding that weekend.

state witnesses, followed by only brief recitations by five defense witnesses as to the defendant's appearance when the murder occurred.

A key issue is a suspect's identification near the hotel that night, with one resident saying "I'll go to my grave knowing that it was Ken Shiffer. I saw that JoAnn Lutz, claimed he was with her the entire evening in question."

"I'll go to my grave knowing that it was Ken Shiffer. I saw that JoAnn Lutz, claimed he was with her the entire evening in question," remarked 35-year-old Dianne Szklarz, a former Monroe Street resident who identified the suspect running away from the hotel carrying a metal pipe.

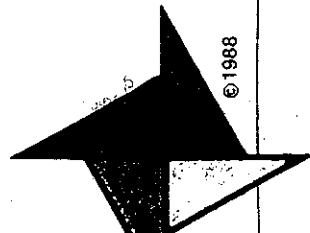
Please see JURY page 16

supporters
defend
an Quayle

Dinner helpers

Tyson
murder

MIKE EFFEY
Press-Enterprise
Photo Service



other role.

So far, Quayle has been busy working on Cabinet committees without him. Quayle has held no press conferences or granted any interviews as aide to the White House, apparently without his new job.

And through it all he has been the butt of outrageous jokes.

"Vice presidents have traditionally been the subject of some pretty mean jokes," observed Jeff Nesbit, Quayle's press secretary. "They really can't defend themselves."

8, 1988

There are 43 days until the debut of Mickey Mouse

Jury

justice in the manner each respective side views it.

The defense pointed to the case as "a classic mistaken identification;" the prosecution pointed to an adamant eyewitness who could not be shaken from her story.

A composite sketch drawing of a suspect showed a distinct beard that the eyewitness later said was wrong. Police had no physical evidence, either fingerprints or blood samples, against Shaffer. But they pointed to discrepancies in his alibi story when questioned, although he always maintained innocence.

D.A. Naus' deliberate recitation of his witness accounts notably clashed with Costopoulos' forceful, dramatic persuasion, stilling a crowded courtroom during two hours of

recitation of his witness accounts notably clashed with Costopoulos' forceful, dramatic persuasion, stilling a crowded

thing," Costopoulos went on, "She's got a stake in this

Murder

reporter and columnist in Washington who attended the Thatcher dinner Wednesday night as a guest, said of Quayle, "I can't imagine why they didn't include him. Normally, they are rearranging tables up to the last minute at these things."

"But I do agree that too much has been written about him," she added. "I saw him at a luncheon the other day and I told him, 'Don't let it destroy your self-confidence...'"

But Quayle is not discouraged, according to Nesbit. He went to the State Department luncheon with Mrs. Thatcher where Ms. Beale saw him, and he attended

the guest list was drawn up, according to a White House aide who reviews such lists with an eye toward politics.

"I think it just was a mistake," said B.J. Cooper, a spokesman for Reagan.

By some estimates, the mistake was compounded when the Reagan failed either to extend Mr. Naus, however, warned the jury not to be taken by "defense slight-of-hand" and "misdirection," comparing his counterpart's tactics to those employed along the midway at the Bloomsburg Fair.

"Come on in, come on in," he feigned, waving his hand in the air. "We're not here because of a composite. Maybe it was right and maybe it wasn't right.

"They're as sure as we are —

one of them doing it is George Sheeler," he mentioned of a co-defendant whose fingerprint was found on a beer bottle at the crime scene. "And the question

proudly. "We just assume it's the East Coast media who are doing this," said Gordon Dervil, chairman of the Indiana Republican Party. "We know Dan Quayle, and we know how well he's going to do well as vice president."

The conservatives who consider him one of their chief allies in the Bush White House also say that they are convinced that George Bush, at least, is treating Quayle right.

"I'm satisfied that he will get a fair deal from George Bush," conservative leader Paul Weyrich said. "In fact, my information is, that Bush has really come to like him."

for you is who is the other one?" Attorneys for both sides, along with family members of both the accused and the victim, appeared weary tense as they awaited a decision, which must be unanimous.

Relatives and court officials spent the bulk of the evening chatting, strolling through the courthouse halls, drinking coffee and smoking innumerable cigarettes after the jury received the case at 4:30 p.m.

Police officials involved in the investigation, encompassing a special state police task force assigned to help Berwick solve three homicides last summer, huddled in private-quarters in the district attorney's office.

Jury deliberations resume at 9 a.m.

Where he was picked up this morning, he was seen to leave while waiting for a bus. He was last seen at the intersection of 10th and Main streets, according to police sources and the city's transit authority.

"We are going to continue the search for him," said police spokesman John Gandy.

He was last seen at the intersection of 10th and Main streets, according to police sources and the city's transit authority.

"We are going to continue the search for him," said police spokesman John Gandy.

Derick will vacate at 34 E. Main.

Johnston said Rea and Derick will consider using both the main floor and basement of the former Penney store. An architect has already been asked to design several fronts to replace what is now a long, blank expanse of tile and Please see PENNEY page 2

Men tangled in two murder cases often drank together

By LEON BOGDAN
Press-Enterprise staff

BERWICK — Two Berwick men entangled today in separate murders often went out drinking together, at times getting so intoxicated each would have to help the other stand, according to court records of previous criminal proceedings.

The day after John K. Tyson was returned to Pennsylvania to face charges of strangling his ex-girlfriend, his former drinking buddy, Kenneth A. Shiffer, was convicted of murder in a beating at the Hayes Hotel.

Columbia County court records point to an unusual acquaintance between the two murder Please see MURDER page 20

Bringing up Tom



Press-Enterprise/Bill Hughes

Pilgrim WENDY VAN HORN
... at Nescopeck elementary

By the Press-Enterprise staff

BLOOMSBURG — Last July, Bill and Delmar Zeisloft took a flock of young turkeys under their wing and decided to raise them right — no hormones, no chemicals, no additives.

This afternoon, one of the birds will grace their family's table as the centerpiece of an all-natural feast.

Does a turkey need the help of modern chemistry to grow into a

What will sta

By SUSAN BROOK/ Press-Enterprise

First the turkey on the platter, then the hunt for venison on the hoof. And for those not out in search of something good to eat, this weekend will bring the first intensive crush of Christmas shopping.

Today's Thanksgiving holiday starts a five-day weekend that extends through the opening of deer hunting season Monday.

Public schools, some local

Crib needed for child abandoned by dad

Two years ago, the Smith couple was looking forward to the birth of their first baby, the beginning of what should have been a happy life together.

But the child, a little girl, was born in a complicated cesarean-section operation that deprived the baby of oxygen to begin her life.

Soon, the infant developed a seizure disorder and was

diagnosed as having cerebral palsy, mental retardation, severe allergies to food and autism. Many months of her young life have been spent in the hospital.

Mr. Smith, unable to cope with his daughter's physical impairments, abandoned his family. The couple has since divorced.

Today, Mrs. Smith gets by as

best she can, but is unable to work because the child requires constant attention.

The apartment the mother rents is sparsely furnished: There is no living room furniture, the child sleeps in a borrowed crib, and the mother sleeps on a mattress on the floor.

Social workers who work with Please see FUND page 20

This story is a true account of a case on file with a local social service agency.

To help make Christmas brighter for this family and others in our area, fill out the coupon found on page 28 and send it with your check to:

Brighter Christmas Fund
Press-Enterprise
3185 Lackawanna Ave.
Bloomsburg, PA 17815

Contributions, which are tax-deductible, can

also be dropped off at any Press-Enterprise office. Please do not mail cash.

All money received is disbursed to those in need. There are no administrative costs; the work of those overseeing the appeal is voluntary.

If you need help from the fund, please make a request in writing and mail it to the Brighter Christmas Fund, in care of the Press-Enterprise. Make sure to include your phone number and list any current benefits received from service agencies.

88
Brighter Christmas Fund 1988

GOOD DAY



Weather

Today/Fair
High temp/46°

Index

Classifieds/31-38
Nation/World/16-17

■ RESIGNS: Millville police chief

■ CHRISTMAS TREES: Local farm

Chronology of three murders in Berwick Investigation events listed

In a stab well of the hotel. In press conference, Mahalaik said Radziak died as a result of blunt force injuries he suffered in the assault.

□ July 16 — Lee Creasy is shot in the back shortly after 1 a.m., while entering his home, and dies less than an hour later at the Berwick Hospital Center. Police seek Leighow for questioning several hours after killing.

□ July 17 — Police announce they have a possible motive in Creasy killing, but will not reveal what it is.

□ July 20 — Police narrow search for the Creasy killer to one coworker, reported to be Leighow, who agrees to submit to a polygraph test.

□ July 31 — Leighow takes and passes a polygraph test. (Police would not confirm that he was the suspect who took the test. Nor would they reveal the results.)

□ Aug. 9 — Harman is found murdered behind a shed in his backyard. Police said his throat was slashed and his head brutally beaten.

□ Aug. 12 — Authorities announce an official news blackout on all information pertaining to the three murder investigations after the Press-Enterprise and WNEP-TV is used a composite sketch of suspect in Harman's murder.

□ Aug. 13 — Berwick police interrogate a hitchhiker about the Harman murder for more than three hours, but man is cleared. Police drop him off on Interstate 80 to continue his journey.

□ Aug. 16 — State police join Berwick

Dauphin, in serious condition. Was interviewed by police, couldn't identify attacker.

□ May 12 — Radziak dies from an apparent heart attack.

□ May 14 — Forensic pathologist Isidore Mahalaik said circular marks on Radziak's body indicate he may have been attacked with hammer. Police confirmed a bloodied hammer was found

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**WE'LL BE
CLOSED ON
COLUMBUS DAY**

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you
a
local
history
buff?**

Every Monday you
will read little known
facts of local history
written by Ted
Fensiermacher, life-
long resident,
historian and writer,
in his weekly column

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9 A.M. to 12 Noon

Bloomsburg Office: Drive-in & Walk-up
Benton Office: Lobby
Sweet Valley Office: Drive-in
And Remember

MAC

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at our Bloomsburg**

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Holland American Line-Westours Presents...
YOUR VACATION!

PANAMA — April 16, 1988

11-day Panama Trans-canal cruise
and 2 nights Acapulco or (extension
optional) to West Coast — Holland-
America Line - S.S. Rotterdam

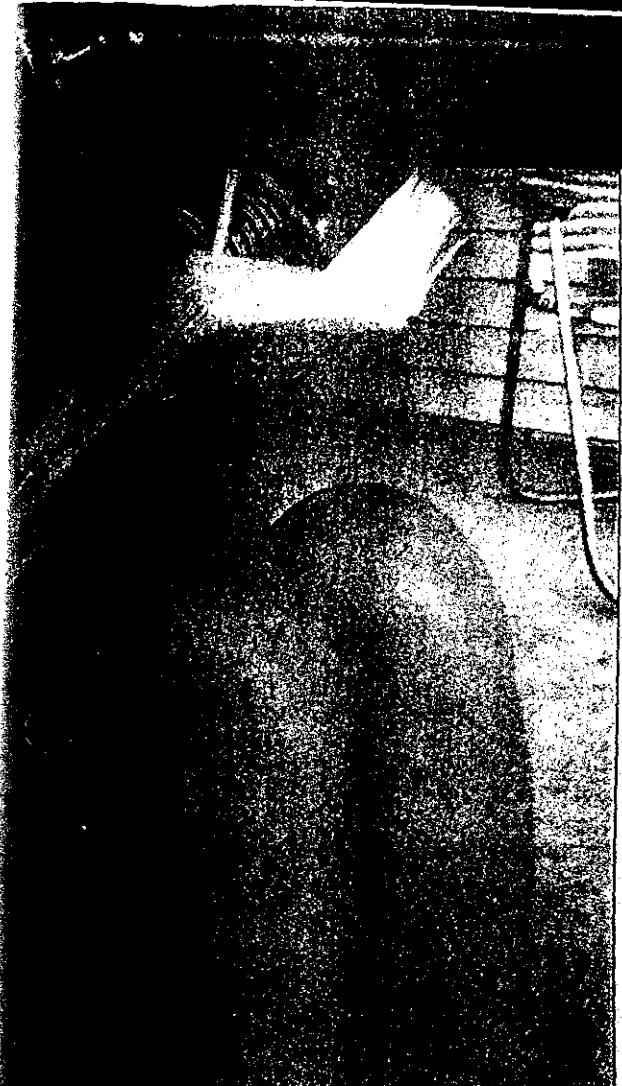
ALASKA — Aug. 3, 1988

Limited Space
14-day cruise • Air to Vancouver • S.S.
Rotterdam to Juneau • Bus Skagway to
Fairbanks • Luxury rail Fairbanks to
Anchorage • includes Denali Nat'l.



SOUTHERN CARIBBEAN —
Jan. 17, 1988 Fly/Cruise
10-day cruise • S.S. Rotterdam •
Ports of call: Curacao • Venezuela •
Grenada • Martinique • St. Thomas
• Nassau

CANADIAN ROCKIES —
June 26, 1988
Air-Motor Coach
12-day escorted tour from Blooms-
burg including: Seattle, Banff, Lake
Louise, Columbia Icefield, Jasper



Press-Enterprise/Keith Haupi

Linda Street, 13, sits on her porch doing some required summer street in Berwick with mother Susan watching.

part to legislation aiding the Catastrophic Loss (CAT) Fund.

The General Assembly amended state law effective July 1 by adding a surcharge to the Act.

Please see FINES page 18

fine, plus \$2 for every mile over the limit after a 5 mph grace period, plus \$17.50 costs.

Add \$30 for the CAT
Please see GLANCE page 18

Murder suspect's descriptions vary

By LEON BOGDAN
Press-Enterprise staff

BLOOMSBURG — Prosecution witnesses differed Wednesday when describing a murder suspect named "George" seen drinking with his victim, one woman recalling light blonde "bangs" combed to the front.

"That's him over there. Wearing the yellow blazer," said Joan Beaver, pointing out defendant George Sheeler, who wears his black hair flattened to the sides and back.

"Are you saying this man, at the time, had blonde hair, and as you call them, bangs combed down in the front?" defense attorney Frank Kepner asked

incredulously.

"Definitely," replied Beaver.

The 28-year-old Berwick woman testified she had danced and drank with Leonard Radziak at a social club before he was brutally beaten and later died as a result of an apparent robbery on May 11, 1987.

Radziak, 51, who suffered from chronic alcoholism and a diseased liver, died at Geisinger Medical Center about 20 hours after the beating.

He might have survived the assault if in better health, said a pathologist, conceding it was "a tough one to call" in ruling on why he died.

Multiple blows delivered by what appeared to be a hammer.

Please see SUSPECT page 8

Tony has region feeling lucky again

MORGAN/ Press-Enterprise staff

Summer is again gripping the region. Super 7 jackpot reached at \$1 billion Wednesday, but local lottery fever wasn't as hot as the \$1 million bonanza.

"It's not as hot as it was in here back then," Linda Miller, manager of the Food Mart on Main Street in Berwick.

Business was brisk — he sold 1,000 tickets by mid-afternoon — but close to sales in the April drawing, he sold close to 3,000 a

day. Lottery headquarters in Harrisburg said \$57 million in tickets had been sold by late Wednesday at a rate of 220 per second.

At most local ticket outlets, however, the action was non-existent around half hour before the

drawing.

Most retailers said that was the case most of the day, with business being heavy at times and dead at others.

Martha Hampton of Jill and Marty's Copy Shop in Berwick said they were selling about 1,000 to 2,000 tickets daily, down from the 4,000 in April.

"There's not as much excitement this time," Hampton said. "Maybe people spent all their money on the last one."

Those buying the tickets admitted there was little chance they would win, but held onto the slim hope, noting that "somebody has to."

"Don't ask me why I'm playing. It's just a donation to the government," said Stephen Kundrat of Berwick, to which the store clerk quickly replied "I'll take your donation."

Not all players were as pessimistic, however.

Please see LOTTERY page 18

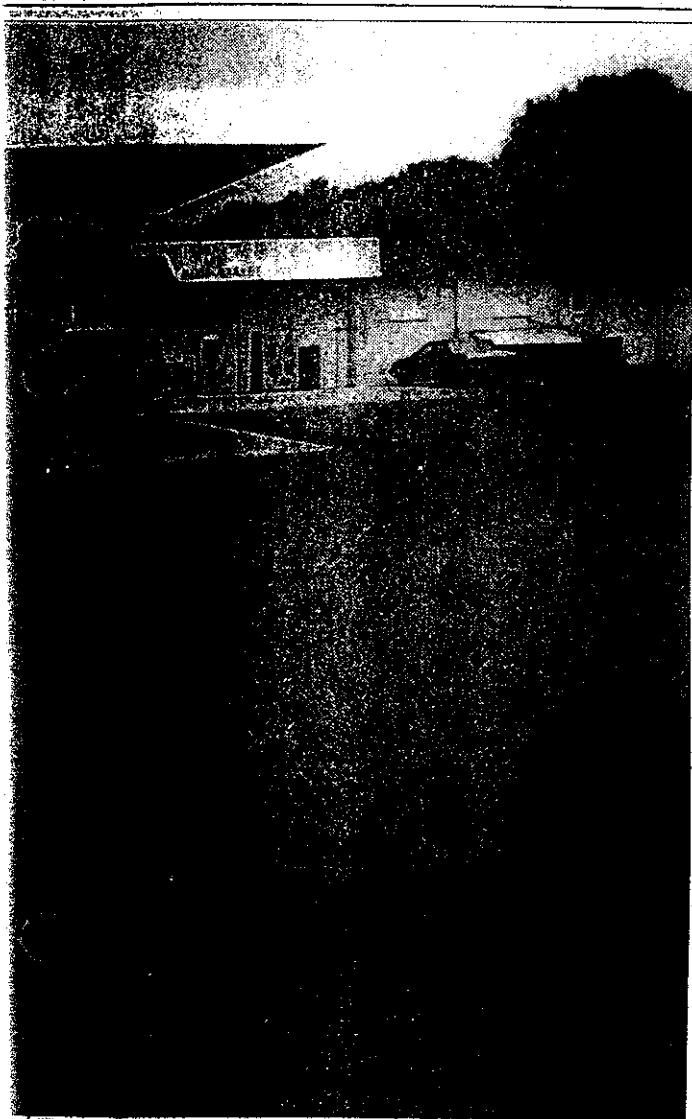
Unknown players to split \$60M pot

HARRISBURG (AP) — A jackpot of at least \$60 million dollars will be shared by two players who picked seven of the 11 winning numbers in Wednesday's Super 7 drawing, lottery executive director Jim Scroggins said.

Both winners used the computerized Quick Pick system to select their numbers. Each of the two winning players will receive at least \$30 million dollars. The exact value of the jackpot will be announced Thursday afternoon, said a lottery official.

Scroggins said 222 players picked six winning numbers for \$4,846.50; 7,774 picked five winning numbers for \$277.50; and 127,029 players picked four winning numbers for \$7.

JULY 20 1989 THURSDAY/35¢



Press-Enterprise/Keith Haupt

cks emptied. A new sewer system will eliminate the he work. It should be completed by fall.

sewer system

will include the convenience store and restaurant owned by the Hornes — Slabtown Auto Sales, Mini Market and Restaurant.

Also among the hookups are Our Lady of Mercy Catholic Church, Andy R's Good Times at the Lariat bar and about 20 residences.

Among the residents affected is Joseph Slanina, who said he has been having problems with his well water.

"It's going to solve the problem," said Slanina, noting that he was the person who

oh Slanina
system will
problems

\$194,900

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munity

Suspect

Continued from page 1
and a pipe on the head, arms, shoulder and buttocks were not life-threatening in themselves but led to death as a result of Radziak's poor overall health, said Dr. Isidore Mihalakis.

"This man's die was cast the minute he was injured," Mihalakis said, referring to the victim's "extremely brittle" health confirmed through autopsy.

Radziak was also "very much intoxicated" when beaten, he added.

One defendant, 27-year-old Kenneth A. Shiffer, has already been convicted in Columbia County court of murder for participating in the robbery beating.

Police believe George Sheeler, a 41-year-old Mifflin Township resident, plotted the robbery and enlisted Shiffer's help in accosting the victim. Although identified early on as a suspect, Sheeler was not arrested until 15 months later.

He is on trial this week for murder, assault and conspiring to rob Radziak of \$400, although the victim did not yield his money during the severe beating.

Witness Beaver, who described "George" as wearing jeans and a solid blue polo shirt that night, said the man tried talking her out of giving Radziak a ride back to his room at Hayes Hotel.

"I told him I couldn't. I don't drive," she went on.

Sheeler, who frequented the club in Berwick, was identified by others, including a state trooper who stopped him along Route 11 that night, as wearing a light blue checkered shirt.

Beaver also admitted being unable to identify Sheeler at a preliminary hearing last fall because, she explained, of poor eyesight irritated by allergies. But she held fast to a similar description of a blonde-haired suspect at that hearing.

Gary Robbins, another patron

who saw Radziak at the American Ukrainian Club before the attack, said "someone" told him not to give "Lenny" a ride home that night.

Radziak also laid four \$100 bills on the bar, Robbins recalled, when the suspect and Beaver were seated near him.

He was unable to offer a description of that man. However, a couple who waited on customers at the bar that evening, Donald and Anna Hellenthal, recalled Sheeler coming into the club with Radziak, both departing before him by about 20 minutes.

Sheeler, according to Donald Hellenthal, made calls on a portable telephone kept behind the bar up to five times that night, including right before he left about 12:40 a.m. or 12:50 p.m. The times vary in statement given to police.

Radziak, he said, left with Beaver and two men later identified as Tom McGran and Ernest Knorr, who agreed to drive him home.

Beaver said "Tom and Ernest appeared 'very excited'" on returning to the car after both had helped an intoxicated Radziak into the hotel.

"They said they had dropped Lenny off in someone else's room," Beaver said.

Radziak, however, was found lying beaten and bloodied right outside his room on the second floor, where his assailants lay in wait in a darkened hallway according to other boarders.

"I heard 'Ow! Ow! Ow!' And 'Bang, bang, bang.' Like someone hitting the walls," recalled 73-year-old Lawrence Laubach, hotel resident whom Radziak had nicknamed, "Louie the Kraut."

"I called him Lenny the Polock. And next to him was the Puerto Rican," explained Laubach of the friendly ethnic references by which hotel residents came to know each other.

Salem woman injured in crash

Exhibit "K"

May 14, 1988

PRESS-ENTERPRISE

Serving the heart of the Susquehanna Valley

suspect seen by witness

Identify
witness
questioning



35
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mustache.
3: Dark, waist-
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ect.

Man spotted carrying pipe from hotel

By ANDY ROSE
Press-Enterprise staff

BERWICK — Police are seeking a man seen carrying a "long pipe-type object" near the Hayes Hotel shortly after Leonard Radziak was brutally beaten there Monday morning.

Police said yesterday they have found no motive for the beating of Radziak, 51. He died Tuesday, and police termed the case a homicide.

The suspect is believed to be 25 to 35, and police have released a composite sketch, based on a witness's description.

The witness, whom police did not identify, saw the man walking between LaSalle and Washington streets shortly after Radziak was beaten Monday at 1:19 a.m., said Sgt. Robert "Chico" McCormick, a criminal investigator for police. The hotel is at 541 LaSalle St.

The man was carrying a "long pipe-type object," 26-28 inches long, police were told.

Meanwhile, a bloodied hammer that was found in the stairwell of the west Berwick hotel has raised suspicions that another person was involved, a source said.

Police would not comment on the hammer or the possibility of a second assailant.

Radziak, a hotel resident, suffered severe head trauma and lacerations in the attack, police said. He died at Geisinger Medical Center, Danville, on Tuesday night.

McCormick described the attack as "very violent," noting there were numerous marks on the wall and a large blood stain on the carpet in the narrow hallway outside the victim's room.

Police searched Radziak's hotel room and found "nothing out of the ordinary," McCormick noted.

At this point, theft has been ruled out as a motive because the victim had \$400 in his

possession, McCormick said.

"The fact remains they weren't after the money because they could have had it," said Tpr. Charles Confer of state police at Bloomsburg, who are assisting Berwick in the investigation.

It does not appear the assailant was scared off, Confer added.

Police can only speculate on the motive, said Berwick Police Chief Eugene Golla.

"Revenge? What else? I don't know. I'm stumped at this point," Golla said. "At this point, we're having trouble coming up with a logical motive."

Radziak, who was unemployed, was known to flash money and get into friendly arguments at the bar, "but I never remember anything that would get anybody after him," said American Ukrainian Citizens Club manager Robert Pollick.

Radziak was at the Ukrainian Club Monday from 12:45 a.m. to 1:15 a.m., when he asked a group of three to give him a ride back to the hotel, police said.

Two of those people, whose names are being kept confidential, volunteered to answer questions from police yesterday, McCormick said.

They said they noticed the hotel foyer was dark when they dropped Radziak off, said the investigator, who later discovered a light bulb had been unscrewed.

The beating took place just minutes after Radziak arrived home, police said. He was later discovered by one of five other hotel residents, who promptly called for an ambulance and police.

The victim was taken to Berwick Hospital Center, then by helicopter to Geisinger, where he was admitted in serious condition to the special care unit. He died Tuesday evening.

The man seen by the witness was described as a white male, around 5-foot-8. Please see SLAYING page 9.

Profile
American Ukr
Don Hellenthal
Radziak, who
hallway outside

Video store
Berwick

BERWICK — Lenny Radziak had his share of friendly arguments in the neighborhood bars here, but "nothing that wasn't forgotten the next day," an acquaintance said Wednesday.

Bobby Hayes spoke favorably of Radziak and, like others who knew him, said he didn't deserve the fate that met him in the dark hallway outside his room at the Hayes Hotel early Monday morning.

At 1:19 a.m., after arriving home from the American Ukrainian Citizens' Club, Radziak was brutally beaten with a blunt instrument by at least one man. He died Tuesday.

"They came to give him a beating," said Hayes, 20, whose family

saw, it was very violent."

The assailant put dozens of deep marks into the wall in the narrow hallway outside Room 7 in what police described as a "very violent" act.

"I never remember the guy doing anything that would get anybody after him," said Ukrainian Club manager Robert Pollick. "He wasn't a fighting guy."

Radziak, unemployed and on welfare, spent a lot of time at the local bars, friends and acquaintances said yesterday.

For at least eight years, he was a member of the Ukrainian Club at 1222 Freas Ave., coming into the bar "quite often," sometimes three or four times a week, said Pollick.

Served Radziak his last few drinks early Monday morning.

Radziak would spend \$2 to \$5, said Hellenthal. "If his girl was around, he'd give her a five or a 10 to play the machines," he added.

Occasionally, when he would drink a lot, he would provoke people, but not to the point of causing a violent reaction, most agreed.

And he never reached the point of fighting someone, added Hellenthal.

"He didn't get mad that he would threaten anybody," said the bartender. "He wasn't somebody to get off his stool to retaliate."

Ironically, Sunday night "was a peaceful night for him," said Hellenthal. "It was unusual that he

came in so ones, Hellenthal. "He did have at least a half-bar five or 10 a pay day," s Police foun have ruled o the attack.

Hellenthal Lenny's natu to put his ar the bar."

But despite and misundre acquaintance admirable qu

"He was as long," he said than he took.'

Slaying

Continued from page 1

with a slender build, according to police. He has dark hair and a pointed nose, and wears a beard but no mustache, according to police.

He was wearing a dark, possibly black, waist-length coat, which the witness described as a "Members Only-type," police said. He wore dark trousers and a pair of white sneakers that also had another color.

The witness was shown a "couple hundred" mugshots, but was unable to match any with the man, McCor-

mick said.

An autopsy to determine the cause of Radziak's death will be completed this afternoon, said Mon-tour County Coroner James C. Rodenhaver.

Rodenhaver said he has called in forensic pathologist Isadore Mihalakis of Bethlehem, who is trained in investigating exceptionally violent deaths.

Police said a relative told them Radziak died of an apparent heart attack, but Rodenhaver said the cause of death cannot be made

official until the autopsy is completed.

If the victim suffered a heart attack, Mihalakis would determine whether there was a link between the ultimate cause of death and injuries from the beating, Roden-haver said.

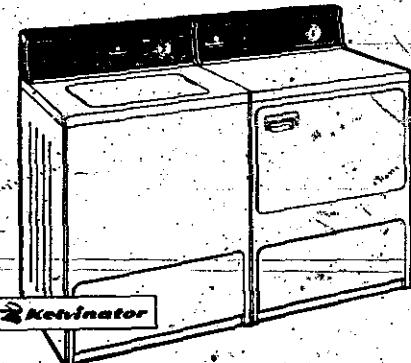
Police have nevertheless ruled the death a homicide.

Anyone with information about the incident or suspect may call Berwick police at 752-3677. All information will be kept confidential.

Leonard R

Willard's Of Danville

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Bill Hughes
seen the

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

KENNETH ALAN SHIFFER, :
Petitioner : CIVIL No. 1:00-CV-1829
v. :
BEN VARNER, et al., : (Judge Caldwell)
Respondents :
.

CERTIFICATION OF SERVICE

I, Kenneth Alan Shiffer hereby certify that on July 16, 2001, a copy of the foregoing document was served by placing same, first-class postage prepaid, in the United States Mail, addressed to:

John W. McDanel, Esquire
Columbia County District Attorney
Court House, Main Street
Bloomsburg, Pa. 17815



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